# The Solicitors' Journal

VOL. LXXVI. **Saturday, November 5, 1932.** No. 45



## Current Topics.

### New Chairman of London Sessions.

THE promotion of Mr. HOLMAN GREGORY to the office of Common Serjeant of the City of London having rendered vacant the post which he had occupied for some years, namely, that of Judge of the Mayor's and City of London Court, and Mr. CECIL WHITELEY, who for some time has been Chairman of the London Sessions, having been appointed Mr. HOLMAN GREGORY'S successor, the chairmanship of London Sessions thus becoming vacant, has now been filled, on the recommendation of the Home Secretary, by the appointment of Sir PERCIVAL CLARKE. No better choice could have been made. Sir PERCIVAL, who is a son of the late Sir EDWARD CLARKE, one of the most brilliant advocates the English Bar has seen, inherits not a little of his distinguished father's forensic ability. Educated at Eton and Trinity Hall, Cambridge, the nursery of many great lawyers, Sir PERCIVAL was called to the Bar at Lincoln's Inn in 1894, and of that Inn he was elected a Bencher in 1925—an election which afforded much satisfaction to his father, who by that time was at the very top of the list of Benchers. Sir PERCIVAL has specialised chiefly in criminal law, and in 1912 he became junior counsel to the Treasury at the Central Criminal Court, being advanced in 1928 to the post of senior prosecuting counsel. In that responsible post he has always shown that moderation in presenting the case for the prosecution which is the distinguishing mark of a high-minded counsel. With the experience thus gained of the work of the criminal court added to his judicial experience as Recorder of Exeter, a post which he has held since 1922, he comes to his new office amply equipped for the discharge of the onerous duties which will now fall to him.

### Riots.

RECENT disorders recall disturbances of a much more serious character which occurred in Bristol almost exactly 100 years earlier and led to the prosecution of the mayor for failing to take due measures to suppress the riot. From Saturday, 29th October, to the following Monday there was practically mob law in Bristol. Several persons were killed and many injured, and a large number of buildings were destroyed by fire. The mayor was charged with failing to give appropriate orders and directions or to take due means to quell the disorders, and it was alleged that he absented and concealed himself, permitting the rioters to remain assembled for a long time. LITTLEDALE, J., observed at the trial that one who had the duty of suppressing a riot was in a difficult position, "for if, by his acts, he causes death, he is liable to be indicted for murder or manslaughter, and if he does not act he is liable to an indictment on an information for neglect." He was bound, therefore, "to hit the precise line of his duty." But the obligation existed whether a man had sought a public situation "as is often the case of mayors or magistrates" or whether "as a peace officer, he has been compelled to take the office that he holds." The jury returned a verdict of not guilty. An extract of *The Times* comment on the matter, reproduced in the issue of that journal for 2nd November, 1932, contains the following interesting passage: "That the jury have come to a just decision upon the case as formally put before them, and according to the evidence on both sides, we have not the smallest doubt. But that His Majesty's Government could do no otherwise than order the Attorney-General to take such steps as would tend to satisfy the country *how* it came to pass that so many buildings in Bristol had been burned to the ground, and that during six and thirty hours no adequate measures were adopted for resisting an incendiary and destructive mob in their outrages upon corporate and private property, must be admitted by all reasonable persons."

### "Poor Persons."

Two recent cases afford illustrations of the fact that advantage is often taken by the facilities granted to poor persons by those whom the rules are not intended to assist. In each of these cases the husband, a respondent in a divorce petition, was ordered to pay the full costs. It was stated in one of them that the husband was earning more than £400 a year and in the other that the respondent was in comfortable circumstances and had been allowing his wife £10 a month. In the latter, LANGTON, J., asked why a certificate to sue under the Poor Persons Rules had been granted to the petitioner. In the former, BATESON, J., remarked: "Abuses of the Poor Persons Divorce Rules are, I am afraid, not infrequent. Therefore, it is necessary when one finds such a case to see that it is communicated to the Poor Persons Committee." Cases of this nature are particularly regrettable in that they are apt to give rise to resentment which tends to obscure the real need which the Poor Persons Rules supplies. It is, therefore very desirable that this method of exploiting both branches of the profession should cease, not only in the interests of lawyers themselves, but also from the view-point of the poor litigant.

## "Consider Your Verdict."

THE case of *Honeyman* v. *Williams*, which was recently tried by permission of the British Broadcasting Corporation with invisible counsel before an invisible judge and a hypothetical jury without evidence of any kind beyond a bare statement of fact, demonstrated where the learning of a judge and the natural sympathies of a jury may part company. The action was the first "mock trial" in the "Consider Your Verdict" series organised by the B.B.C., in which anonymous barristers are taking part. The short facts were that Williams, a motorist, driving a high-powered car, was occupied in conversation with a person in the rear of the car and failed to notice a child straying out in front of the car. Honeyman, a passing pedestrian, in successfully rescuing the child, was himself struck and severely injured by Williams' car. The action was brought by Honeyman for damages for personal injuries arising out of the defendant's negligence. The defendant pleaded the contributory negligence of Honeyman. The judge apparently took the view that the defendant was not civilly liable, as the plaintiff's injuries were not natural and probable consequences of the defendant's act, but consequences which the defendant could not be expected in the normal course of things to contemplate. "The higher you rate the courage of Mr. Honeyman," said the judge, "the more do you remove his conduct from that of the ordinary man." The jury could only find for the plaintiff if the ordinary man had felt, in the circumstances, an irresistible impulse to act as Honeyman did. Damages have been held recoverable for illness arising out of nervous shock caused by the deceit of a defendant (*Wilkinson* v. *Downton* [1897] 2 Q.B. 57), and for death from nervous shock to a mother who feared for the safety of her children on seeing a lorry running violently down an incline owing to the defendant's negligence: *Hambrook* v. *Stokes* [1925] 1 K.B. 141. The question involved in *Honeyman* v. *Williams* was discussed by SWIFT, J., in *Brandon* v. *Osborne Garrett & Co.* [1914] 1 K.B. 548, where he said that there may be a moral obligation which would so act upon the mind of any ordinary reasonable man that he would instinctively rush to the assistance of one in immediate peril through the negligent act of a third party. His lordship said that the proper question for a jury to decide in such a case would be whether the plaintiff was guilty in all the circumstances of contributory negligence. The actual decision in that case would be of great help to a plaintiff in a case like *Honeyman* v. *Williams*. It was held that a wife who instinctively clutched her husband's arm and tried to pull him from a spot where glass was falling as a result of the negligence of the defendants' servants was entitled to damages for injuries she suffered in so doing. There is a great deal to be said against it being either unnatural or negligent to attempt to save life under any circumstances, and it is submitted that the jury in *Honeyman* v. *Williams* might well find for the plaintiff without unduly straining the law.

## The Rule in *Hill* v. *Crook* (1873), L.R. 6, H.L. 265, excluded.

THE rule in the above case, that if a testator gives a legacy to a named individual by the description of child, nephew, etc., and a legitimate person answers the description, evidence cannot be admitted that the testator really meant his bounty for an illegitimate relative of the same name, has no doubt often sent it the wrong way. In a typical example, *Re Fish*, [1894] 2 Ch. 83, LINDLEY, L.J., observed: "This is one of those painful cases in which it is probable that the testator's intention will be defeated, but the rule of law is too strong for the appellant." A. L. SMITH, L.J., said: "If we could have admitted the evidence offered, I should gladly have done so." In a remarkable case before FARWELL, J., *Re Jackson: Beattie* v. *Murphy*, more fully discussed in this week's "Conveyancer's Diary," at p. 772 and reported 76 SOL. J. 779), a testatrix left a share of residue to her nephew, Arthur Murphy. In fact there were no less than three persons who answered that description. If all had been either legitimate or illegitimate, the rule would not have been in question; if one had been legitimate, and the others illegitimate, it would have deprived both the latter of the share without reference to their conflicting claims. In fact two were legitimate and one illegitimate, and FARWELL, J., holding that the ambiguity as to the legitimate nephews let in evidence of intention, found on such evidence that the illegitimate nephew was meant, and so felt himself open to decide in his favour. He thus excluded not only the two legitimate nephews, but the next of kin, for whom it was contended that the gift was void for uncertainty. In *Re Pearce* [1914] 1 Ch. 254, it was held that even the proved ignorance of a testator that particular children were illegitimate did not exclude the rule. In *Re Heliwell* [1916] 2 Ch. 580, the rule was excluded by SARGANT, J., on the ground that a testator had described his illegitimate sister as his sister, and thus indicated on the face of the will that in mentioning relationships, he included all blood relations. The rule was discussed in a more recent Privy Council case, see *Khoo Hooi Leong* v. *Khoo Hean Kwee* [1926] A.C. 529, at p. 539. It was no doubt invented in the supposed interests of morality, but, like certain other such rules (conspicuously s. 1 (2) of the Legitimacy Act, 1926) its chief effect is directed, not against the immoral persons, but against those innocent ones whose existences result from their immorality.

## Changes in Patent Law.

THE Patents and Designs Act, 1932, which came into force on 1st November, contains several changes, mostly of technical importance, but some of which will, it is hoped, prove very useful and tend to the more effective protection of merit. One important change has reference to search. The officials of the Patent Office in future will make a wider search than hitherto to ascertain whether the invention has been published in this country in any document, e.g., a foreign specification. This should tend to diminish the chances of subsequent challenge on the ground of anticipation. On the other hand, a check is put upon the undue and unfair exercise of his rights by a patentee by a new provision to the effect that where it can be shown that the existence of a patent for an invention which involves the use of materials not protected by the patent or for an invention relating to a substance produced by the process, has been used by the patentee so as unfairly to prejudice the manufacture, use or sale of such materials in the United Kingdom, then an order may be made for the grant of compulsory licences. Threats of legal proceedings are also dealt with—a check being put upon the abuse of this method—a very necessary amendment of the law. Again, power is given to the Comptroller to refuse a patent for an invention "which is so obviously contrary to well-established natural laws that the application is frivolous." This is intended to strike at perpetual motion contrivances and other silly ideas. Finally, we may note the very important change of procedure brought about by the displacement of the Solicitor-General and the substitution of a High Court Judge as the special appeal tribunal by which the Comptroller's decisions may be reviewed. Altogether these changes are by no means unimportant, and their operation will be watched with considerable interest.

## Payment of Members of a Governing Body.

THE Court of Appeal has found it possible to do what EVE, J., held he had no jurisdiction to do, namely, to allow a company promoted for a scientific object and not intended to be run for a commercial profit to amend its memorandum of association by authorising the payment of salaries to members of its governing body, although the memorandum expressly prohibited the appointment of such members, except co-opted

officers, to a salaried office: *In re Scientific Poultry Feeders Association* (*The Times*, 19th October). The learned judge would have liked to have granted the petition, but thought on the authority of *In re Society for Employment of Women* [1927] W.N. 145, that he could not do so. From our previous note on this care it may be remembered that the work of the association, which was incorporated in 1929, had increased to such an extent that the time of the members of the governing body was being fully taken up, and, on the principle that the labourer is worthy of his hire, they found they could not continue the work unless they were paid for their services. The Court of Appeal has thus given a wider and more reasonable interpretation to s. 5 of the Companies Act, 1929. EVE, J., thought he was not being asked to alter an "object" of the company, but part of its fundamental constitution. But the Master of the Rolls pointed out that the court ought to sanction an alteration of a company's memorandum "with respect to" the objects of the company, so as to enable it to carry on its business more economically or more efficiently or to attain its main purpose by new or improved means. It was certainly in the interests of efficiency for the society to retain an experienced governing council, and even if they had to pay them for their services they had the means to do so, and such an alteration would not turn the society into a company for profit to be distributed among the members. The court followed and approved the Scottish decision in *Incorporated Glasgow Dental Hospital* v. *Lord Advocate* [1927] S.C. 400, on a similar petition, and they distinguished the case of *In re Society for Employment of Women* on the ground that there the application was to cancel something upon which the existence of the society depended.

### The "Egypt."

THE questions of fact that arose in the case of the "Egypt," in which Mr. Justice LANGTON gave judgment on 21st October, were of an unusually romantic nature, even for the Probate, Divorce and Admiralty Division. The action was brought by La Société Nouvelle des Pêcheries à Vapeur, owners of the steam trawlers "Roche Rouge," "Roche Françoise" and "Roche Ivoire," for salvage for services alleged to have been rendered by them to a cargo of gold on board the P. and O. steamship "Egypt," which sank off Ushant on 20th May, 1922, while on a voyage from London to Bombay. The plaintiffs alleged that they located an obstruction in the summer of 1926 which they believed to be the "Egypt." In so doing they were acting under contract with the Union d'Enterprises Sous Marines. Actually, an Italian Salvage Company, known as the Sorima subsequently recovered gold to the value of £732,250, which was later abandoned to the underwriters, who were the defendants in the present case. Mr. Justice LANGTON held that the plaintiffs had not established to his satisfaction that what they located was the "Egypt," and the claim failed on the ground that the court was not satisfied that anything which the plaintiffs had done was of any assistance in the ultimate preservation of the gold. On the question of law, his lordship held that the plaintiffs could look for remuneration to their own contractor only, and there was no ground on which a sub-contractor could found a maritime lien against the res. "Salvage," said BRETT, L.J., in "The Schiller" (1877), 2 P.D. 145, "is the service which volunteer adventurers spontaneously render to the owners in the recovery of property from loss or damage at sea, under the responsibility of making restitution and with a lien for their reward." The element of spontaneity was clearly present in this case, as it must be wherever "a visionary reef of gold" is the goal, but the other essential requisites were wanting and therefore the plaintiff failed.

**Mr. William Woolley, solicitor and notary public, of Derby, left estate of the gross value of £182,322, with net personalty £172,274. He left £100 to his clerk, Sidney Wheen.**

## Criminal Law and Practice.

### THE POLICEMAN IN THE WITNESS BOX.

MANY things go to the making of a good witness: absence of bias, control of temper, mental alertness, accurate knowledge of the facts to be deposed to, exact speech. In all of these but the last, policemen witnesses compare favourably with the run of men; in the last they fail, and fail rather badly. The irony of this failure is that it largely arises from an attempt to be specially good. But the training is on wrong lines, and has ill consequences.

In the following remarks the author is the candid friend. For thirty years he has known and appreciated the good qualities of the constable. He can testify that the majority of police officers are careful in observation, and that many of this majority develop great powers of noting detail and carrying it in mind. It is, too, the fact that most well-trained police officers regard the business of giving evidence in the true light, as the presentation to the court of materials for judgment, without any special anxiety to secure an interpretation of that material favourable to themselves. They keep their temper under cross-examination, occasionally unfair, admirably. This is not to say that there is none who pursues his quarry rather than the truth, or that there is never distortion, more or less wilful, of facts.

But it is of a general defect we write here, of that use of a peculiar form of language, which makes much police evidence suspect, and blurs and distorts the picture of things in a dangerous manner.

The ordinary man, left to himself, will tell his story in the language of everyday life. If he be a cultivated person he will naturally use the kind of words with which he converses. He will have a considerable vocabulary, and pick from it the expressions which best describe the events upon which he is offering testimony. If he be a man of the lower classes his selection of words will be more restricted, but he will use plain terms which not only he himself understands, but which will, save for an occasional slang expression, be understandable by all. The cultured and the uncultured will each, in the language he is accustomed to use, seek to reproduce a picture of the happenings he is describing. The words employed by both will be apt to the occasion, though the more ignorant of the two will sometimes fail for a word to describe something which is new in his experience.

Language, at its best, can be a veil between the truth and the hearer, but the person new to giving evidence will have the one great advantage that he will use terms and turns of speech not hackneyed, over and above the ordinary wear and tear of human speech, by being repeated a thousand times, in the same connection and sequence.

The police officer starts with the initial handicap that, in the course of a long career, he will inevitably have a number of very similar happenings to describe, and he would be more than human if he did not tend to stereotype the phrases in which he does describe them. This is an unavoidable drawback, and could be minimised by careful teaching that the smaller differences must not be lost sight of and merged in general descriptive phrases.

The teaching, however, to judge by its results in the witness box, is all the other way. A policeman's evidence is apparently placed in a limited number of pigeon-holes, out of which pieces are drawn to be presented to the court. The finer lights and shades disappear in the process.

There is the "refused to go away" pigeon-hole. Under this general description will come special varieties of misconduct ranging from a refusal shouted in a loud voice with obscene additions, to a mere obstinate remaining on the spot when asked to go away.

"Asked," by the way, is always "requested"; no opportunity of using a word with a Latin root must be missed by a constable.

There is the "He was very violent" pigeon-hole. The nature of the violence is always left unspecified until particulars are elicited by questioning. It may be anything from frantic behaviour, necessitating severe restraint, to the reluctant hanging back and occasional jerking attempts to get away indulged in by many drunken persons.

There is no need to describe the whole range of lockers. All police court practitioners know them, and will recognise what is meant. It must be clear to all that the use of general phrases which cover a multitude of diverse circumstances blurs details and can sometimes be very misleading.

It may be said that in the immense majority of cases the finer details do not matter, and this, in a way, is true. But in the hundredth case the facts are dangerously obscured, sometimes to the prejudice of the accused, sometimes to that of the witness.

Truth is very difficult to elicit, and one has, in any event, to be content with an approximation. The margin of error should be reduced by every means possible. It is a fact that no sooner has one seen something happen than the mind gets busy putting it into words. The thing seen, even in the mind of the spectator, rapidly ceases to be a picture, and becomes a kind of record written in the brain. Added to this is a process of rationalisation. Such and such things happened, then such and such other things must have happened. Presently the have-beens and the must-have-beens are inextricably mixed up. There is a chance left for the ordinary man to be recalled to what he has actually seen, because the edges of his picture at least are left vague, and if some detail there can be lit up by a question, it may tend to the correction even of the centre of his picture. But there is no such hope for the policeman. His picture is framed in a rigid terminology which admits of no change or revision, and yet, by the generality of the terms, it is full of blur and doubt.

The thickness of the veil drawn by the policeman between what he has seen and his description is multiplied by his use of long words, ill-apprehended by the often illiterate person in the dock. It is unedifying to hear the magistrate or the clerk translating the constable's evidence to the prisoner. The translation itself is subject to inaccuracy, for often the constable himself imperfectly appreciates the meaning of the long words he uses. A constable has been heard to say that he saw a man and woman having "intellectual course" together, meaning "sexual intercourse." Naturally the accused persons did not understand what he was talking about.

There, of course, was an excuse for the choice of the long words. Indecency is wisely masked in decent language, though it must never be forgotten that, at any cost, the accused person must be given opportunity to understand what is being said against him, and if he knows only coarse terms, coarse terms must be used, the very coarsest if necessary.

There is no such excuse for an officer who says that "the prisoner was forcibly ejected from licensed premises and persistently endeavoured to return," and when offered the English phrase that the prisoner was "turned out of the public house and tried to get back," dully repeats his sonorous sentence. It is definitely unfair that poor and ignorant people, many of them already rather lost in their unusual surroundings, should have to stand up and have rolling periods flung at their none too clear heads.

What is to be thought of the phrase, "I had my right arm extended horizontally from the shoulder," or "perpendicularly," as the case may be? Surely "straight out" and "straight up" are apt expressions. In any case of doubt the officer can be asked to repeat his signal there and then in the witness-box. One was so required recently. He had spoken of horizontal extension; he held his arm perpendicularly. How meaningless these long words can be was shown by one police witness speaking of "extending his arm parallel from the shoulder." Indeed, policemen have to translate these phrases to themselves. One for greater safety spoke of a "foot pedestrian," so that there was no doubt the man was walking upon his feet. At this stage the thing gets ridiculous; the danger of ridicule is never far away.

The stereotyping of phrase leads to exaggeration when possibly, or probably, none is intended. Any person who knows the courts must be struck with the general fairness exhibited when the prisoner's career and character is to be put before the magistrate or judge to aid him in assessing the penalty to be inflicted, but here again sometimes a bad impression is made by the use of a stock phrase such as "the worst possible type of criminal." Only last year a detective officer was severely reproved at the Central Criminal Court for using the sounding but absurd phrase, "a wilful, persistent, plausible and cunning criminal of the worst possible type." The officer's tongue, trained to the medium he used, simply ran away with him. The author is on such occasions reminded of Tennyson's line, "Like a tale of little meaning, though the words are strong."

There is a perversity about the official police use of language that seems incurable and which is manifested not only in the choice of words, but in the construction of sentences. A policeman, left to himself, would say: "I took the prisoner to the station"; "I charged him"; "I searched him." He is taught to say, "The prisoner was taken to the station," "was charged," "was searched," leaving it in doubt who was the active agent of the doings described in the passive voice. Usually the turn of phrase is not of the slightest importance; occasionally it may be of much. The work of a police-court proceeds quickly. It has to do so if the work is to be got through. Anything which increases the chance of a point being missed which ought to be taken, of a light being flashed on an obscure fact, is against the interests of justice. A very small thing sometimes gives an indication that is invaluable to inquiry.

As has been said elsewhere, things have got to the pass where it almost seems that the police have an unseen army to do their work for them. They very rarely claim to have done it themselves. "The prisoner was restrained"; "the prisoner was placed on an ambulance"; "assistance was procured"; "the doctor was sent for," and so on, and so on.

Some officers have an unhappy choice of words all their own, but the ill-chosen expressions are rapidly copied. A little while ago suspected persons would "look" into a car on a parking place, now they usually "peer." "Peer" has a sinister connotation, which is not fair to the accused, who does occasionally turn out to be a harmless person with more curiosity than discretion. "Peer" is now and then the right word, which only makes its general use more annoying.

The writer has long been convinced of the necessity of proper training of policemen in the giving of evidence. They are apparently always trained by other policemen, and a bad tradition goes on.

The men are quick in learning. Rarely does a policeman who gets put right in court repeat the same objectionable form of words. As an old policeman once said to the writer, in words which might have been misunderstood by one who knew him less well, "When a policeman knows what the magistrate wants he will always say it."

To return to the point where we started, those who know the policeman well know that he is a fellow-man excellently trained for his job and usually anxious to do it well, without offence to the public. But he does himself much less than justice in the witness box, and his wooden way of giving evidence may lead to injustice from the bench.

---

**Sir Herbert Gibson, Bt., solicitor, of Great Warley, Essex, formerly of Great St. Helens, left estate of the gross value of £21,345, with net personalty £5,807. He left the documents and records relating to his presidency of The Law Society to devolve as heirlooms with the baronetcy.**

# The Administration of Justice Bill.

This Bill, which passed its second reading in the House of Lords on 26th October, consists of miscellaneous provisions, mainly amending the Judicature Act, 1925. Section 1 regulates and entirely changes the practice as to appeals from official referees. This practice was laid down by the full Court of Appeal in *Wynne-Finch* v. *Chaytor* [1903] 2 Ch. 475, and is now the subject of O. 59A. By para. 2 of the Order, appeal now lies, if the reference is from Chancery, to the Chancery judge in court, and, in the other Divisions, to a Divisional Court. By s. 94 of the Judicature Act, 1925, a referee may, and shall, is so directed by the court or a judge, state a special case on a question of law at any stage of the proceedings under a reference. Section 1 of the Bill repeals the latter section, and provides that an appeal shall lie to the Court of Appeal from any decision of an official referee on a point of law. Otherwise no decision of an official referee is to be called in question. This provision appears to make his decision on the facts sacrosanct, and, if that is so, he will stand in a position superior to that of a High Court judge, whose findings of fact do not bind the Court of Appeal, as laid down in *Coghlan* v. *Cumberland* [1898] 2 Ch. 704. It is true that an appeal on the facts from a High Court judge is never a very hopeful proposition; still, it is not an impossible one. The suggestion may be made that the Bill should be amended so as to place the official referee and the High Court judge in an equal position in respect of appeal from their findings of fact. The section is timed to come into operation on a date to be fixed by the Lord Chancellor, and there is the usual saving in respect of previous appeals.

The second section gives the High Court power to make a grant of probate or administration in respect of any deceased person, notwithstanding that there may be no estate within the jurisdiction. Section 20 of the Judicature Act continued the previous power, which, as held by various decisions collected, "Empire Digest," Vol. 23, p. 82, did not extend to the making of such grants in respect of any deceased person leaving no personal estate within the jurisdiction. The inconvenience of this limitation was apparent in several of the cases, as, for example, *re Tucker* (1864), 3 Sw. & Tr. 585. In that case the deceased, who had eloped from her husband, who was domiciled in England, died intestate, leaving property in France, but not here. It appeared that, by the law of France, the husband could not claim the property there until he had obtained a grant of letters of administration in England. Since there was no personal property in England the judge, Sir J. P. Wilde, rejected his application on that behalf, with the observation that the French law was very unreasonable. A juster estimate would, perhaps, have fixed the boot on the other leg. The present amendment will prevent such an impasse recurring, and marks a useful little reform.

The third and fourth sections concern the internal management of the Probate Division, and are of no particular interest to the profession. Section 3 enables the President to give directions for the disposal, whether by destruction or otherwise, of notices of applications for grants of probate or administration, and s. 4 provides for the use of different seals at the various probate registries. These changes involve small consequential amendments in the Judicature Act, 1925.

Section 5 is of more practical importance, for it adds a sub-section to s. 84 of the Law of Property Act, 1925, enabling the authority thereby set up to award costs at discretion, and either to tax the amount or direct how it shall be taxed. The section in the Law of Property Act, 1925, is, of course, that, authorising the discharge or modification of restrictive covenants by such authority or a court, but the power to award costs is not in terms given to the authority. It may possibly be spelt out of the Arbitration Act, 1889, but there appears to be some doubt about it, and at least one of the appointed officials has held that it is not conferred upon him. The proposed section will resolve the doubt, and obviously make for convenience in working the new tribunals.

# Contract.

## Intention to Create Legal Obligations.

It is not every agreement that is a contract. An agreement, which, in all other respects, conforms to the requirements of the law relating to the formation of contracts, may fall short of a contract in that the parties never intended to invest it with legal force. "To create a contract there must be a common intention of the parties to enter into legal obligations, mutually communicated expressly or impliedly": per Atkin, L.J., in *Rose & Frank* v. *Crompton* [1923] 2 K.B. 261, at p. 293.

Where an agreement has the appearance of a regular contract, an intention to create legal obligations is, *primâ facie*, to be inferred. But such an intention may be negatived expressly, or impliedly from the surrounding circumstances.

In *Rose & Frank* v. *Crompton* a written agreement regulating the commercial relations of the parties to it contained the following clause: "This arrangement is not entered into, nor is this memorandum written, as a formal or legal agreement, and shall not be subject to legal jurisdiction in the law courts either in the United States or England, but it is only a definite expression and record of the purpose and intention of the three parties concerned to which they each honourably pledge themselves with the fullest confidence, based on past business with each other, that it will be carried through by each of the three parties with mutual loyalty and friendly co-operation." The Court of Appeal (Bankes, Scrutton and Atkin, L.JJ.) held that the document did not constitute a binding contract, and this decision was afterwards affirmed in the House of Lords—see [1925] A.C. 445.

Bankes, L.J., in his judgment at p. 282, said: "There is, I think, no doubt that it is essential to the creation of a contract, using that word in its legal sense, that the parties to an agreement shall not only be *ad idem* as to the terms of their agreement, but that they shall have intended that it shall have legal consequences and be legally enforceable. In the case of agreements regulating business relations it follows almost as a matter of course that the parties intend legal consequences to follow. In the case of agreements regulating social engagements it equally follows almost as a matter of course that the parties do not intend legal consequences to follow." Atkin, L.J., at p. 293, said: "I have never seen such a clause before, but I see nothing necessarily absurd in business men seeking to regulate their business relations by mutual promises which fall short of legal obligations, and rest on obligations of honour or self-interest, or perhaps both."

In *Balfour* v. *Balfour* [1919] 2 K.B. 571, the intention to create legal obligations was impliedly negatived. There, the plaintiff sued her husband for money due under an alleged oral contract to allow her £30 a month in consideration of her agreeing to support herself without calling upon him for further maintenance. The husband was resident in Ceylon, and had returned there, leaving his wife in England to undergo medical treatment. The Court of Appeal (reversing the decision in the court below) held that the agreement did not constitute a legal contract, but was only a domestic arrangement which could not be sued upon.

Atkin, L.J., at p. 578, said: "... it is necessary to remember that there are agreements between parties which do not result in contracts within the meaning of that term in our law. ... It is quite common, and it is the natural and inevitable result of the relationship of husband and wife, that the two spouses should make arrangements between themselves—agreements such as are in dispute in this action—agreements for allowances, by which the husband agrees that he will pay to his wife a certain sum of money, per week, or per month, or per year, to cover either her own expenses or the necessary expenses of the household and of the children of the marriage, and in which the wife either expressly or impliedly promises to apply the allowance for the purpose for

which it is given. To my mind those agreements, or many of them, do not result in contracts at all . . . and they are not contracts because the parties did not intend that they should be attended by legal consequences."

These cases indicate that written or oral agreements may, according to the circumstances, be construed as either legal contracts or agreements only binding in honour. In *Rose & Frank* v. *Crompton*, however, Scrutton, L.J., expressed the view (at p. 289) that an agreement under seal is quite inconsistent with no legal relations arising therefrom.

These cases are closely allied to the line of cases of which *In re Fickus*; *Farina* v. *Fickus* [1900] 1 Ch. 331, is an example. There, a father, prior to the marriage of his daughter, in a letter to her intended husband stated: "You are of course aware that with my large family Eliza will have little fortune. She will have a share of what I leave after the death of her mother, who I wish to leave in comfortable independence if I should leave her a widow." The intended husband accepted the letter as giving him some rights, and the marriage took place. The court held that the letter did not constitute a contract by the father but was merely an expression of his intention.

Cozens-Hardy, J., in his judgment at p. 335 said: "I regard it as in no sense a proposal or offer, but rather as a representation that the testator was not in a position to make any proposal or to give his daughter anything at the time, but that he intended to give her something at his death." In this case, there was never an offer which, by acceptance, could be converted into an agreement.

There is, of course, a clear line of demarcation between *Farina* v. *Fickus* on the one hand, and *Rose & Frank* v. *Crompton* and *Balfour* v. *Balfour* on the other. In *Farina* v. *Fickus*, there was never an offer and, therefore, never an agreement; in the other cases there was an offer plus an acceptance, viz., an agreement, but the parties never intended that agreement to create legal rights and obligations.

## Enforceable Secrecy at Meetings.

Members of a certain district council have complained that the part they have taken in the proceedings of committees on which they serve, and their votes on the resolutions put to such committees, have been published against their will.

The question whether meetings of local bodies were public was raised and decided in the negative in *Mayor, etc., of Tenby* v. *Mason* [1908] 1 Ch. 457—incidentally, the Court of Appeal then affirming the last decision of Mr. Justice Kekewich, whose original judgment was read as he lay on his deathbed by the late Lord Parker. In consequence of that ruling the Local Authorities (Admission of the Press to Meetings) Act, 1908, was passed, giving the press the right to attend all meetings of local authorities having the power to raise a rate, unless any such authority resolved otherwise in the public interest, and in view of the special nature of the business to be considered. By s. 3, however, committee meetings were excluded from the scope of the Act, except in the case of committees which might themselves be local authorities empowered to raise a rate.

The Act did not make the meetings of local authorities open to the public generally, though s. 5 saves the right of such bodies to admit the public. Virtually, however, it made the proceedings at such meetings public so far as they might be audible and visible to newspaper reporters. The exclusion of committee meetings from its scope left the members of committees power to shut out press and public, subject to any rules which might be imposed on them by the authority calling them into being, whether by virtue of s. 56 of the Local Government Act, 1894, and Part IV of the 1st Sched. thereto, or otherwise

Ordinary proceedings of a local authority are thus in no way private, and no member could reasonably complain of another discussing his votes or speeches with outside parties, since they could be criticised editorially or in the correspondence columns of any newspaper, or verbally by the readers of newspapers. The transaction of business at a secret session, or in a committee room, however, would be on a different footing. The matter was touched upon in *Williams* v. *Mayor, etc., of Manchester* (1897), 41 Sol. J. 388. By s. 233 of the Municipal Corporations Act, 1882, a burgess has the right to inspect minutes of proceedings of his municipal council. Some burgesses of Manchester, dissatisfied with the fact that the minutes of their council did not disclose the minutes of their committees, desired a declaration from the court that they had the right to inspect the minutes of the committees. The declaration ultimately made by the court (Cave and Lawrance, JJ.) was that the burgesses were entitled to inspect the minutes of all acts of committees submitted to their council for approval, and whether such acts were finally approved or not by the council.

This left the burgesses no right to be informed of the individual votes and speeches of members of a committee at any of its meetings, from which perhaps the deduction may be made that they have no inherent right to such information. The question, however, whether members of a committee have any duty of secrecy to the committee as a whole or to other members of it in particular is on a different footing. Such a duty might be inferred at a session of a local authority from which the press was excluded in pursuance of a resolution under the provision in that behalf in the 1908 Act. Clearly, if individual councillors had the right to take notes of such proceedings and immediately hand them over to the representatives of newspapers, the resolution for secrecy would be nullified. The legal remedy, however, is not very obvious. Councils can make and unmake committees, and presumably can remove a particular member from a committee for any obvious breach of secrecy, when such secrecy is a duty. It has also been held that local authorities, though the creatures of statute, have the common law right of amotion from their body (see cases cited by Lopes, L.J., in *Booth* v. *Arnold* [1895] 1 Q.B. 571, pp. 573-6). Thus an alderman or councillor disclosing confidential matter in secret debate might be expelled from his council, though this conclusion was not necessary for the decision in *Booth* v. *Arnold*, *supra*, and was avoided by Esher, M.R., and Rigby, L.J.

Otherwise than by expulsion from office no legal remedy appears to exist for violation of secrecy in such case. Councillors who wish to discredit each other have perhaps an effective deterrent in the knowledge that they themselves are, in the language of bridge players, vulnerable, and in the law of libel if they speak falsely.

Clerks or other servants of corporations revealing anything that may have passed in secret debate could presumably be dismissed summarily for misconduct in office, and this would also apply to the servants of a company disclosing proceedings at board meetings, or at the meetings of committees appointed by a board. Shareholders have no right either to attend or to be informed of the deliberations taking place at board meetings, though s. 120 of the Companies Act, 1929, provides that minutes of proceedings at board meetings must be kept. In general, of course, companies are entitled to keep the details of their trade and financial arrangements free from undue publicity, and discussions at directors' meetings may be highly confidential. Possibly a director who, against the interests of his company, revealed what passed at such a meeting might be treated as a servant who had broken an implied part of his service of contract and dismissed from office, and, if thought necessary, sued for damages. Secrecy in a company's business is discussed and the limits laid down in the well-known case of *Newton* v. *B.S.A.* [1906] 2 Ch. 378.

The duty of secrecy arising from service to the Crown is very powerfully reinforced by the Official Secrets Acts, 1911

to 1920, but they are limited in scope, and practically only apply to information likely to be useful to an enemy. The ingenious may perhaps find pleasant exercise in considering how a Minister can legally be brought to book for premature disclosure of Cabinet secrets. Dismissal from office, no doubt, and possibly impeachment.

It is perhaps curious that the question of breach of duty in disclosure of what has passed in legal proceedings was the subject of no really authoritative ruling until *Scott* v. *Scott* [1913] A.C. 417, in which Lord Loreburn observed that the main question was "almost an uncharted sea" (p. 447). The case was remarkable for the strongly dissentient judgment of Lord Moulton in the court below, reported [1912] P. 241, a judgment approved in the House of Lords in over-ruling the majority decision of the Court of Appeal.

Similarly, although it is well understood that neither the deliberations of a jury nor the opinions of individual jurymen should be published, the most authoritative pronouncement on the matter appears to be that of Lord Hewart in *R.* v. *Armstrong* [1922] 2 K.B. 555, and, since the only official decision was that the prisoner's appeal against his sentence of death failed, it is open to the criticism that it was by way of dictum. After the original verdict in the case, which of course aroused enormous public interest, some newspapers published comments on the evidence purporting to come from a member of the jury. In the words of Lord Hewart: "In the opinion of this court nothing could be more improper, deplorable, and dangerous. It may be that some jurymen are not aware that the inestimable value of their verdict is created only by its unanimity . . . it follows that every juryman ought to observe the obligation of secrecy which is comprised in and imposed by the oath of the grand juror. If one juryman might communicate with the public upon the evidence and the verdict, so might his colleagues also, and if they all took this dangerous course differences of individual opinion might be made manifest, which, at the least, could not fail to diminish the confidence that the public rightly has in the general propriety of criminal verdicts."

If a member of a petty jury is bound by the oath of a grand juror, it is not, of course, because he has taken it, and therefore he could not be prosecuted in the ordinary way for its violation. It may be suggested that his offence in disclosure of the jury's deliberations would be in the nature of contempt of court.

## Company Law and Practice.

### CLIV.

### THE PROSPECTUS.—II.

Last week I attempted to clear the ground for an examination of the requirements imposed by law as to the contents of a prospectus; this week I will endeavour to conduct that examination. One of the checks which the Legislature has imposed is the necessity of delivering to the Registrar of Companies for registration a copy of every prospectus, dated and signed by every person named therein as a director or proposed director, or by his agent authorised in writing; the Registrar cannot register any prospectus until it is so dated and signed, while every prospectus must contain on the face of it a statement to the effect that a copy has been so delivered for registration. This requirement will be found to be fulfilled at the head of every prospectus. There is a penalty in the shape of a default fine (as to which see s. 365) for breach of these obligations, which are to be found in s. 34.

We then come to s. 35, which incorporates the Fourth Schedule to the Act; before dealing with the contents of that schedule we may note in passing that, under s. 35, it is provided that there shall be no contracting out of the section, and also that there shall be no issuing of forms of application for shares or debentures without a prospectus complying with the requirements of the section, except in connection with invitations to underwrite or offers not made to the public. The issuing of forms of application without a prospectus is clearly looked upon as a most heinous offence, for the penalty for so doing, unless in one of the excepted cases to which I have referred, is a maximum of £500 (s. 35 (3)).

The Fourth Schedule is a lengthy one, and it would be waste of space to set it all out here, or even to refer to all its provisions, and those who are sufficiently concerned must refer to it for full details. Some of the principal provisions, however, may conveniently be referred to, as also the general scheme of the schedule. It is divided into three parts, headed, respectively, "Matters required to be stated in Prospectus," "Reports to be set out in Prospectus" and "Provisions applying to Parts I and II of Schedule." Part II contains matter which is new, and was first introduced to the Companies Act, 1928, and this might be here appropriately referred to *in extenso*. These reports are two in number, but the second is not always necessary.

The first report, which must be set out in every prospectus, is a report by the company's auditors on the company's profits in each of the three financial years immediately preceding the issue of the prospectus, and on the rates of dividend, if any, paid by the company on each class of shares for each of those three years. Particulars must be given of each class of shares on which these dividends have been paid, and also particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years. Provision is made for the cases where no accounts have been made up for any part of the period of three years ending on a date three months before the issue of the prospectus—which must always be the case where it is a new company in respect of which the prospectus is issued—by saying that in such case there must be a statement of that fact. These provisions are amplified, in what appears to be a most misleading way, in paras. 5 and 6 of Pt. III of the Fourth Schedule; why these amplifications, or qualifications, as they really are, could not have been engrafted on Pt. II, so that all the appropriate provisions were together under one heading, is not readily apparent. However, they are separated by a great gulf from the position they ought to occupy, hence the desirability of reference to them here.

Paragraph 5 says that, if in the case of a company which has been carrying on business, or of a business which has been carried on for less than three years—this latter reference will become intelligible when the other report in Pt. II which I mentioned has been explained—the accounts of the company or business have only been made up in respect of two years or one year, Pt. II is to have effect as if references to two years, or one year, as the case may be, were substituted for references to three years. It is hardly necessary to observe that the Act does not allow a company which has in fact had its accounts made up for the three years to get away with the publication of anything less than all three; the only case in which a company can do so is where the complete accounts are not available. It seems that the Act might well have taken a stronger line in respect of companies which have been carrying on business for more than three years by making it compulsory on them to have the auditor's report, and thus, by implication, compelling them to have their accounts made up: though, of course, there are difficulties in the way of such a requirement, which, if imposed, might place difficulties in the way of honestly conducted concerns, whose accounts might not be completed for reasons beyond their control. It will be noticed that Pt. II, para. 1, requires a separate statement of the profits for the three years—no longer can tendencies which might be hidden under a statement of average profits be so hidden.

Now we must also look at Pt. 3, para. 6, to see what is the meaning of the expression "financial year" used in

Pt. II. It means what one would expect it to mean, namely, the year in respect of which the accounts of the company, or of the business, as the case may be, are made up; but it contains the necessary addition to the effect that, where, by reason of any alteration of the date on which the financial year ends, the accounts have been made up for a period greater or less than a year, that greater or less period is to be deemed to be a financial year. Some elasticity of this nature was certainly necessary, but there is obviously some scope as a result for a certain amount of financial jugglery, though from the purely practical point of view it is probable that this could not be turned to very great account by the unscrupulous.

To turn back now to Pt. II, para. 2. If the proceeds or any part of the proceeds of the issue are or is to be applied in the purchase of any business, the prospectus must also contain a report made by accountants (who are to be named in the prospectus) upon the profits of the business for each of the three financial years immediately preceding the issue of the prospectus; and this is so whether the proceeds are to be applied "directly or indirectly" in the purchase of a business. What is the indirect purchase of a business is a matter of fact in each case, but judicial guidance on the principles applicable will be eagerly awaited; presumably the purchase of a controlling interest in a company limited by shares would not be the indirect purchase of a business, though a transaction which involved the acquisition of the whole of the share capital of a company formed *ad hoc* to take over a business, might be held to be such.

One point of distinction between the reports referred to in paras. 1 and 2 of Pt. II is this, that whereas the report on the profits and dividends of the company for the three years must be made by the company's auditors, that as to the profits of the business to be acquired is only to be made by accountants who shall be named in the prospectus. Thus, in the latter case there is no necessarily independent investigation, the result of which is to be published to intending subscribers for shares or debentures, the report may be made by the accountants of the owners of the business to be purchased; the company itself, if its auditors have made an independent investigation, may have in its possession information which sheds a totally different light on the financial position of the business to be purchased, and that without casting any reflection on the accountants of the business, for these matters largely depend upon opinion. Yet the company is under no obligation to disclose to its intending shareholders or debenture-holders that the company's adviser's views on the business to be purchased are different from those of the accountants whose report is published in the prospectus. So long as there is no absolute standard of what are the profits of a business (and it is difficult to see how there can be) so long will this difficulty remain.

Let us turn aside for a space to see who the persons may be who are to report, under para. 1, on the company's profits and dividends. Section 133 deals with the auditors, and we there find that directors and officers of the Company, and also a body corporate are prohibited from being the auditors of a company. So also is any person who is a partner of, or in the employment of, an officer of the company; there is an exception in the case of private companies, but, *ex hypothesi*, that does not concern us here, unless it is possible to read para. 1 of Pt. II as authorising a series of reports by the auditors for the time being of the company, but this does not seem to be a feat which even the most accommodating mind could accomplish.

(*To be continued.*)

### CENTRAL CRIMINAL COURT BAR MESS.

On his appointment as Chairman of London Sessions, Sir Percival Clarke, formerly Senior Treasury Counsel at the Central Criminal Court, will be entertained to dinner by the Central Criminal Court Bar Mess on Friday, 6th January, 1933.

## A Conveyancer's Diary.

**Construction of Wills. Admission of Extrinsic Evidence.**

An interesting case upon the construction of a will and the admissibility of evidence raising a point which is not completely covered by authority is *Re Jackson: Beattie* v. *Murphy* [1932] W.N. 218.

The facts were that Mary Jackson, widow, by her will dated 2nd September, 1921, after giving pecuniary legacies, devised and bequeathed all her real and personal estate to trustees upon trust for sale and conversion and upon trust, after payment of her funeral and testamentary expenses, debts and legacies, for her brothers, William Murphy and Arthur Murphy, her sisters, Ellen Skerritt and Jane McPhillips, and "my nephew Arthur Murphy" in equal shares. The testatrix made a codicil which did not affect the residuary devise and bequest and died in 1928.

At the death of the testatrix it was found that she had three nephews named Arthur Murphy, two of whom were legitimate sons of brothers and one an illegitimate son of a sister.

Arthur No. 1 resided abroad, but was known to the testatrix and had visited her from time to time.

Arthur No. 2 was a son of Arthur Murphy, who was one of the residuary legatees and was well known to the testatrix.

Arthur No. 3 was the illegitimate son of Margaret Murphy, a sister of the testatrix. He was married to a niece of the testatrix and was recognised by the testatrix as her nephew and had managed her affairs during the latter part of her life.

The matter came before the court on an originating summons to determine which of the three Arthurs was entitled to share in the residuary estate, or whether such gift was void for uncertainty.

The important point to be decided in the first place was whether evidence could be admitted to show that Arthur No. 3 was the person intended by the testatrix, there being two legitimate nephews of the same name and there being no context in the will itself to show that the testatrix meant the illegitimate nephew.

The general rule, of course, is that where there is a gift to children or other relations and there are legitimate children or other relations they only are entitled, and extrinsic evidence cannot be admitted to show that illegitimate children or other relatives were intended. That rule is simply founded upon the more general rule that extrinsic evidence is not admissible except to explain a latent ambiguity.

The rule is well exemplified in *Re Fish* [1894] 2 Ch. 83, where the facts nearly resembled those in *Re Jackson*.

In that case a testator gave his residuary estate to his "niece E.W." Neither he nor his wife had any niece; but his wife had a legitimate grand-niece and an illegitimate grand-niece both named E.W. The illegitimate grand-niece tendered evidence to show that she was the person indicated by the testator.

It was held by the Court of Appeal that the illegitimate grand-niece could not come into competition with the legitimate grand-niece and therefore there was no latent ambiguity and no extrinsic evidence could be admitted.

In view of the decision in *Re Jackson*, it may be pointed out that in *Re Fish* it was contended as there was no person who answered the precise description in the will extrinsic evidence was admissible to show who was intended, and that let in the evidence which the illegitimate grand-niece wished to tender as evidence of the surrounding circumstances.

In the course of his judgment Kay, L.J., said "Then it is ingeniously contended that, when once the fact is ascertained that the testator had no niece, there was a latent ambiguity which enabled the court to let in evidence of this kind—that the illegitimate grand-niece was living in the house of the testator and was sometimes called by him his niece. And this was called evidence of the surrounding circumstances.

Suppose in a case where there was no question of illegitimacy, a testator left a legacy to his son John and suppose he had a son named John who had been living away from him, and there was another person named John living with him who was not his son but whom he called his son, in such a case would any evidence be admitted that his son John was not the person intended to be benefited? How can the fact of a testator being in the habit of calling a person his son who is not his son be evidence of surrounding circumstances? It is really evidence of the intention of the testator, to prove that he meant someone else and not the person designated in the will. Does it make any difference that in this case the testator had no niece and that there was only a grand-niece named Eliza Waterhouse?"

A. L. Smith, L.J., said: "In my opinion the rule of law is well established. *Primâ facie* a gift to a testator's niece refers to his legitimate niece, and supposing the only person who could take under the gift was a grand-niece of the testator's wife that means a legitimate grand-niece of his wife and not an illegitimate grand-niece of his wife. That being so there is no latent ambiguity."

Turning again to *Re Jackson*, Farwell, J., in his judgment, after saying that the exact point raised was not covered by authority, expressed the view that evidence was admissible to show that the persons named in the will existed, and that as it appeared that the testatrix had two legitimate nephews bearing the same name, evidence was admissible as to the meaning of the words "my nephew Arthur." His lordship proceeded that, on the evidence, he came to the conclusion that, as between the legitimate nephews he could not determine the meaning and had the matter ended there there would have been an intestacy. But there was also an illegitimate nephew, Arthur Murphy, who had married a niece of the testatrix and was in close relationship with her. If there had been only one legitimate nephew, clearly no claim could be made by an illegitimate nephew, but as there were two legitimate nephews named Arthur Murphy, evidence could be received as to the family, and having considered such evidence he had come to the conclusion that the evidence showed that the illegitimate nephew was the one intended by the testatrix, and the term "nephew" could be applied to the husband of her niece. His lordship added that he was not disregarding *Re Fish* which in his judgment did not apply to that case.

With great respect, I am not so sure that *Re Fish* can be so summarily dismissed; but perhaps when a full report appears it will be seen that the learned judge dealt in more detail with it.

I do not suggest that the decision of Farwell, J., was wrong; but it certainly seems rather strange in view of the earlier authorities. It appears that the strong contention in favour of the view that the learned judge took is that there was no real competition between the legitimate nephews and the illegitimate one, since the former could not have taken in any case, and so the competition was between the illegitimate nephew and the next-of-kin.

It is, however, quite refreshing to find a case where what appears to have been the real intention of the testator was carried out—there have been so many recent decisions which have had the contrary effect.

**Provision in Contract for Indemnity against non-enforceable Covenants.**

I have received from an old correspondent a question with a request that I would deal with it in this diary. It is as follows:—

"A purchases land and enters into a restrictive covenant with the vendor, which the latter fails to register. A sells the land expressly subject to the restrictive covenant to B, and B enters into the usual covenant to observe and indemnify. B re-sells to C. If B sells under an open contract not containing any reference to the restrictive covenant, it is presumed that C can claim a conveyance without mention of the covenant, but if B sells under a formal contract mentioning the existence of the restrictive covenant and stipulating for a covenant to observe and indemnify, what is C's position? Must he covenant to indemnify B against B's liability to indemnify A?"

I have no space this week to say more than that, in my view, C is bound by his contract and must enter into the covenant. If the restrictive covenant is not enforceable for want of registration C undertakes no liability, but there seems no reason why B should not provide in the contract for the indemnity to be given to him *ex abundanti cautela*.

## Landlord and Tenant Notebook.

**Disclaimer and Third Parties.**

When the case of *Re Katherine et Cie., Ltd.* [1932] 1 Ch. 70, the first reported case illustrating the operation of the new disclaimer section in the Companies Act, 1929, came before the court, much reference was made both in argument and in the judgment to the conflict between *Ex parte Buxton, re Müller* (1880), 15 Ch.D. 289, C.A., and *Ex parte East & West India Dock Co., re Clarke* (1881), 17 Ch. D. 759, C.A. In how far the conflict is real, and in how far it may be said to be merely apparent, is what I propose to examine.

The two cases were decided within a few months of one another. In *Ex parte Buxton*, an order was made imposing conditions on a chargee of a lease held by the bankrupt who desired an assignment, namely, that he should pay a quarter's rent then due and that he should covenant to indemnify the trustee: the question was treated as merely one of terms: "of course the trustee would not be allowed by his disclaimer to affect the rights of an equitable mortgagee." In *Ex parte East & West India Dock Co.* leave was given to disclaim a mortgaged lease on the ground that the court ought to have regard only to the question "whether the disclaimer was for the benefit of all the persons interested in the administration" of the bankrupt's estate.

Those who seek to reconcile the two authorities would do well to commence by closely examining the facts, and possibly drawing inferences from the statements of facts (which, in the *Buxton* case, are very economically set forth) coupled with the attitudes of the parties concerned.

In the *Buxton* case it appears that the bankrupt, Müller, was the original grantee of a lease, term and rental not stated. In the *East & West India Dock Co.* case the bankrupt was an assignee of a twenty-one year lease of a public-house (the assignment having immediately followed the grant), the rental being £300 per annum. The bankrupt paid £1,150 for the lease, and a few months later borrowed £1,000 on mortgage from a firm of brewers.

What is more significant for our present purpose is that in the older case the trustee was perfectly willing to assign subject to the conditions proposed and ultimately imposed, while in the later case the trustee was anxious to disclaim and his application was most strongly opposed by the lessors; it is true that the mortgagee had joined in in the court below to try to prevent the destruction of their security and appeared at the appeal lodged by the lessors, but from the fact that the application was made on the ground that the premises were not worth the rent and from the references made in the judgments to the position of the original tenant, one Hill, it seems fair to assume in spite of the payments of £1,150 and £1,000, that refusal of leave would have benefited the mortgagees only by reducing their loss. What the court were really anxious to avoid was reducing the dividend by enabling Hill, when called upon by the lessors to pay rent and perform covenants, to claim against the estate. When

one contrasts this position with that in the *Buxton* case—Buxton would be primarily liable, and the trustee's attitude suggests that he must have been a man of substance, and the rent may moreover have been reasonable—the two authorities do not seem to be so irreconcilable.

These cases were, it should be mentioned, decided under the Bankruptcy Act of 1869, which gave the court fewer powers than its successors of 1883 and 1914. The effect of disclaimer on the liabilities of sureties was also a moot point in those days; *Stacey* v. *Hill* [1901] 1 Q.B. 660, C.A., first decided that those liabilities were extinguished; but it should also be mentioned that the Court of Appeal in the *East & West India Dock* case made it quite clear that their decision would be the same in either event.

In *Re Katherine et Cie., Ltd., supra*, Maugham, J., discussed the two decisions, but held that they could have no bearing upon disclaimer in the case of a company in liquidation, and the lessors successfully opposed the application on the ground that the lease was guaranteed by two sureties. It is true that the disclaimer section of the Companies Act, 1929, s. 267, substantially follows the wording of that of the Bankruptcy Act, 1914, s. 5, a minor difference being that in the case of a company leave will always have to be asked. But the important difference springs from the fact that a trustee in bankruptcy is an assign and capable of becoming personally liable as tenant, while a liquidator is merely an agent of the company. This is, of course, recognised by the language of the new section, which speaks of "company" where one would otherwise find "liquidator" to correspond to "trustee." The effect of this decision improves the position of lessors who, when letting to limited companies, have taken the precaution of insisting upon substantial guarantees. Before the 1929 Act, dissolution following liquidation, if the lease had not been disposed of, had the result that the reversion was accelerated: *Hastings Corporation* v. *Letton* [1908] 1 K.B. 378. Further, the judgments in that case imply that any sub-tenant of the company would find his interest suddenly extinguished, while now he may ask for a vesting order.

## Our County Court Letter.

### FOXHUNTERS' LIABILITY FOR TRESPASS.

In *Hannam* v. *Rushton and Palethorpe*, recently heard at Pershore County Court, the claim was for an injunction to restrain the defendants from riding over the plaintiff's land, and for £1 as damages for trespass on the 4th March, 1932. The defendants (the Master of the Worcestershire Fox Hounds and another member of the Hunt) had paid 10s. into court, with a denial of liability. The plaintiff's case was that a hunt servant (for whose acts the first defendant was liable as employer) had cut some barbed wire, in order to clear a way through the plaintiff's hedge for horse riders. The defence was that (*a*) in view of the plaintiff's objections to fox hunting, every effort was made to avoid his land, but the "whip" was newly engaged on the above date, and was not well acquainted with the boundaries, (*b*) there was a right of way to Grafton Wood, and there had been no departure therefrom on the above date, (*c*) the damage would have been repaired from the hunt fund, if a claim had been made. His Honour Judge Roope Reeve, K.C., held that (1) there was no evidence of trespass by the first defendant, but he was nevertheless liable for the action of his "whip," (2) it was no defence for the second defendant to say that he did not know he had ridden over the plaintiff's land. An injunction was refused, but judgment was given for the plaintiff for 5s., with costs up to the date of payment in, as from which date the defendants were entitled to costs—on Scale B. Compare a "County Court Letter," entitled "Liability for Damage by Foxhounds," in our issue of the 27th February, 1932 (76 Sol. J. 142).

### THE ACCURACY OF EMPLOYEES' REFERENCES.

In *Tuck* v. *Spinks*, recently heard at Beccles County Court, the claim was for damages for libels contained in the following references: "This man was discharged by me for neglect of business through carrying on with women," and "He is honest, a good driver, but is very fond of women." The plaintiff contended that these were accusations of immorality, whereby he had failed to obtain two situations. The defence was that the statements were believed to be true (by reason of complaints from customers) and that both occasions were therefore privileged. It was contended for the plaintiff that there were two kinds of malice—wilful and reckless—and that the defendant had been guilty of the latter. His Honour Judge Herbert Smith, in summing up, observed that a reference, if honestly believed to be true, was not a libel, but the employer must not be actuated by any other motive than to state the truth. The jury found that there had been a libel, which was not malicious, but reckless, and the damages were assessed at one farthing. Judgment was, therefore, given for the plaintiff, each party to pay his own costs.

### THE LEGALITY OF SMALL TYPE.

The principle of *Roe* v. *R. A. Naylor Limited* [1917] 1 K.B. 712, was followed in the recent case of *Pearl* v. *Voge*, at Llandudno County Court, in which the claim was for £8 10s., as the price of an advertisement in an omnibus time table. The plaintiff's case was that he called with a canvasser at the house of the defendant, who (after studying the document for ten minutes) had signed an agreement to pay 4s. a week for fifty-two weeks. The defendant (a Frenchman) contended that he was bewildered by the patter, and understood he was agreeing to pay 4s. a month only. His Honour Judge Sir Artemus Jones, K.C., observed that (1) two clauses were in small type, and, while one bound the defendant to complete the contract, the other entitled the plaintiff to repudiate it, (2) if the plaintiff wished to maintain any reputation, a fresh agreement should be prepared, containing fairer terms and printed in more readable type. Judgment was given for the defendant with costs.

## Correspondence.

### Costs of Leases.

Sir,—In his letter on this subject appearing in your issue of the 29th October, Mr. Mickler seems to be at pains to refute arguments which I have never put forward.

For instance, I have never suggested that a lease does not require careful drafting, or that it should not define the rights of the parties fully and completely. But what I do say is that as by far the greater part of a lease, *quâ* document, is for the benefit of a lessor, he should pay his solicitor's costs for preparing it himself and not be entitled to have these paid by the lessee as under the present custom.

As regards my contention that, as a general rule, all that a lessee wants could be written on a sheet of paper, let Mr. Mickler take any lease recently prepared or perused in his office and he will find that, eliminating what is common to both parties, nearly the whole of the document consists of provisions binding the lessee hand and foot and very little of it is really necessary for the latter's protection. Even the covenant for quiet enjoyment is really not necessary, as the word "demise" implies this.

What the question Mr. Mickler asks me in the last paragraph of his letter has to do with the matter I cannot imagine, as whether I answer it in the affirmative or negative I take it that Mr. Mickler would not advocate the Vendor's solicitor's costs being paid by the purchaser though to be consistent he should do so, if he is of the opinion that it is right that a lessee should pay the lessor's solicitor's costs.

Lincoln's Inn, W.C.2. N. L. Garrett.
2nd November.

# Reviews.

*Cockle's Cases and Statutes on the Law of Evidence.* Fifth Edition. 1932. By CHARLES M. CAHN, B.A., of the Inner Temple, Barrister-at-Law. Demy 8vo. pp. lv and (with Index) 583. London: Sweet & Maxwell, Ltd. 18s. 6d. net.

This is the fifth edition of an extremely useful book. The learned editor has not departed from the original scheme, but has contented himself with bringing the work up to date.

The book is divided into three parts. The first deals with the leading cases on evidence which are arranged in logical order. The second and third parts are given respectively to the material Statutes and Rules of the Supreme Court. A book of reasonable proportions in which the leading cases and the statutes and rules are set out is invaluable. This is not, however, a mere catalogue; the general principles are stated in headnotes to the cases, and there are helpful notes appended where necessary. The index and cross-references make any point accessible at short notice.

This book was originally designed to meet the needs of law students. For them, its attraction is that it is probably easier for the average person to grasp and remember a principle when it is illustrated by a decided case. The student will find it a safe stepping stone to the formal treatises on this branch of law. Moreover, it contains as much information as is ordinarily required by a practitioner.

Of the cases decided since the last edition was published in 1925, *Hobbs* v. *Tinling & Co., Ltd.*, and *Rex* v. *Lapworth* have found places. The recent decisions on the rule in *Russell* v. *Russell* are noted at pp. 317-8. In that part of the book devoted to the statutes, the material portions of the following statutes are reproduced: Law of Property Act, 1925; Supreme Court of Judicature (Consolidation) Act, 1925; Criminal Justice Act, 1925; Moneylenders Act, 1927; Companies Act, 1929; and Infant Life (Preservation) Act, 1929. The New Procedure is not overlooked, for Order 38A, which deals with the powers of the judge on the hearing of the summons for directions, is incorporated. The book is, in fact, brought up to date.

Anyone who has thoroughly digested this book will have at his command sufficient knowledge to overcome the majority of obstacles he will meet either in the examination room or in court.

*Poley's Law and Practice of the Stock Exchange.* Fifth Edition. By R. H. CODE HOLLAND, B.A., of the Middle Temple, Barrister-at-Law, and JOHN N. WERRY. Demy 8vo. pp. xvi and (with Index) 452. London: Sir Isaac Pitman and Sons, Ltd. 15s.

The practice of the Stock Exchange is a matter upon which lawyers frequently require to be informed, and this book will supply them with information with regard to it in a compact form. As to the law on the subject, the lawyer may well find this book of advantage to him on its particular subject, though this subject is, of course, more fully treated from a legal point of view elsewhere. The editors include a chapter on the law relating to companies (the object of which is boldly stated to be to give a brief account of the chief statutory provisions relating to joint stock companies, though the chapter only contains thirteen pages); but references to the law are given throughout the book and are not confined to this one chapter. On p. 251 a reference to s. 67 of the Companies Act, 1929, might conveniently have been made. The heading in the Index "Transfer Deeds" goes rather far, as there is frequently no necessity, as is pointed out in the text, for a deed; while at p. 243 some reference might have been made to the actual effect of a transfer under seal which was originally executed in blank and is filled in subsequent to its execution; it is not quite the whole story merely to say that it is void as a deed at law. On this latter page there does not appear to be a sub-heading (*b*) to correspond with the sub-heading (*a*). This is a book which, on its special subject, will prove useful to the lawyer who wants information on it.

## Books Received.

*Income Tax Law and Practice.* By CECIL A. NEWPORT, F.C.R.A., Corporate Accountant, in collaboration with RONALD STAPLES, F.S.S., Editor of "Taxation." Sixth Edition. 1932. Demy 8vo. pp. xxxiii and (with Index) 356. London: Sweet & Maxwell, Ltd. 10s. 6d. net.

*A Treatise on the History and Law of Fiduciary Relationship.* By ERNEST VINTER, M.A., LL.M. (Cantab.), Solicitor. 1932. Demy 8vo. pp. xii and (with Index) 142. London: Stevens & Sons, Ltd. 10s. 6d. net.

*Wolstenholme & Cherry's Conveyancing Statutes, &c.* Twelfth Edition. 1932. By Sir BENJAMIN LENNARD CHERRY, LL.B., Bencher of Lincoln's Inn and one of the Conveyancing Counsel of the Court, DAVID HUGHES PARRY, M.A., LL.M., of the Inner Temple, Barrister-at-Law, and JOHN ROBERT PERCEVAL MAXWELL, of Lincoln's Inn, Barrister-at-Law. In two volumes. Medium 8vo. pp. cxcii and (with Index) 2075. London: Stevens & Sons, Ltd. £4 4s. net.

*The Secretarial Primer.* By H. C. HOLMAN, F.C.I.S. 1932. Demy 8vo. pp. viii and (with Index) 351. Cambridge: W. Heffer & Sons, Limited. 5s. net.

*The Legal and Ethical Aspects of Medical Quackery.* By LEONARD LE MARCHANT MINTY, Ph.D., B.Sc., of Gray's Inn, South Eastern Circuit and Central Criminal Court, Barrister-at-Law. 1932. Crown 8vo. pp. xi and (with Index) 262. London: William Heinemann (Medical Books) Limited. 7s. 6d. net.

*The Annual Practice*, 1933. Fifty-first Annual Issue. By W. VALENTINE BALL, a Master of the Supreme Court, and F. C. WATMOUGH, of Lincoln's Inn, Barrister-at-Law, assisted by PHILIP CLARK, Head Clerk of the Action Department, and T. HYDE HILLS, of Chancery Chambers. 1932. Demy 8vo. pp. ccccxl and (with Index) 3125. London: Sweet & Maxwell, Limited; Stevens & Sons, Limited. 40s. net.

*The A.B.C. Guide to the Practice of the Supreme Court*, 1933. Twenty-Eighth Edition. 1932. Part I, General Practice. By F. R. P. STRINGER, of the Central Office of the Supreme Court. Part II, The Practice of the Crown Office. By W. E. DAVIS and D. BOLAND, of the Crown Office of the Supreme Court. Crown 8vo. pp. 212 and lxxxv. London: Sweet & Maxwell, Limited; Stevens & Sons, Limited. 10s. 6d. net.

*Indiana Law Journal.* Vol. VIII. No. 1. October, 1932. Indianapolis: The Indiana State Bar Association. Annual subscription, $3.00. Single copy, 50 cents.

*New York University Law Quarterly Review.* Vol. X. No. 1. September, 1932. New York: New York University. Annual subscription, $3.00. Single copy, $1.00.

*Incorporated Accountants' Students Society of London and District.* Lectures, 1931-32. Demy 8vo. pp. xiii and (with Index) 216. London: Incorporated Accountants' Hall. 3s. 6d. net.

*The Rights and Duties of Liquidators, Trustees and Receivers.* By D. F. DE L'HOSTE RANKING, M.A., LL.D., ERNEST EVAN SPICER, F.C.A., and ERNEST C. PEGLER, F.C.A. Eighteenth Edition. 1932. Edited by H. A. R. J. WILSON, F.C.A., F.S.A.A. Crown 4to. pp. xxxi and (with Index) 424. London: H. F. L. (Publishers) Limited. 15s. net.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London and Liverpool.]

# POINTS IN PRACTICE.

**Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.**

### Cigarette Machines in Private Houses.

*Q.* 2595. A client of ours has constructed an automatic machine for the sale of cigarettes, and proposes to make a large quantity and instal them in private houses for private use among members of the householder's family or guests at the house. The machine holds ordinary twenty packets of cigarettes, and is operated by means of a shilling in the slot. He wishes to be advised as to what excise licence duty is payable by him. Is it sufficient that he should pay the ordinary yearly licence for the premises on which he will carry on his business, or must he or the householder pay for each house at which the machine is installed? We seem to remember a recent decision on this point, but cannot trace it.

*A.* It will be sufficient for the client to pay the ordinary yearly licence, for the premises on which he will carry on business, provided he supplies a key to each householder. The latter must be trusted not to use the key to the detriment of the owner (of the machine and cigarettes) whose only remedy will be either (1) to remove the installation and sue for any deficiency in shillings; or (2) remove the key and take out a licence for the house. There have been two decisions of magistrates hereon, reported in *The Justice of the Peace* for the 3rd January, 1931, p. 9, and the 24th January, 1931, p. 58, under the title, "The Licensing of Automatic Machines." If no key is supplied, the cigarettes remain the property of the supplier while in the machine, and a separate cash sale of each packet takes place as and when a shilling is inserted. This renders a licence necessary for each house, but, if a key is supplied, there is a credit sale of so many packets of cigarettes, the property in all of which passes to the householder on delivery at his door. The machine thus becomes a mere money-box (or home savings bank) for the convenience of the householder, who became liable for the price of all the packets when supplied. He can of course have credit for unused packets (if desired) as in the case of most credit sales, unless otherwise agreed.

### Adult Heir and Doweress—Death of Heir testate—Transitional Provisions of L.P.A., 1925.

*Q.* 2596. A was at the date of his death the owner of freehold property subject to a mortgage for £1,000. He died in the year 1909 intestate, leaving a widow, B, and son, C, who had then attained twenty-one, his heir-at-law, and letters of administration were granted to the widow B on 19th July, 1917. C died on 18th April, 1917, having by his will appointed his widow D and E his executors and trustees. By his will he devised and bequeathed all his real and personal estate to his trustees upon trust for D during her life or widowhood, and on her death or second marriage the trustees were to hold the real and personal estate in trust for C's son F. This will was proved on 14th August, 1917, by both executors who are still living. B is also still living but is very old. F has attained twenty-one. D and F wish to raise a further sum on mortgage of the property. We shall be much obliged if you will kindly let us have your opinion as to what steps should be taken in order to put the title into proper order and also as to the correct means of raising money on second mortgage. B is, of course, entitled to dower, but it is not wished to make her a party to the deed if possible, as the incidents of her dower, having regard to her very advanced age, may be disregarded for the purpose of estimating the sufficiency of the security. We presume that a principal vesting deed should be executed. If this is done, will it be possible to raise money on second mortgage by a deed in which D and F together give a legal charge on their life and reversionary interests respectively by way of mortgage for the loan? No written assents have been given, but C was in occupation of the property up to the time of his death, and since then his widow, D, has been in occupation up to the present time. We think, therefore, that an assent by B may be implied and also an assent by the executors of C's will may also be implied.

*A.* There can be no implied assent in respect of the legal estate in A's freeholds, seeing that prior to 1926 an assent was inapplicable to the legal estate in the realty of an intestate, and that since 1925 an assent must be in writing if a legal estate is to be affected (L.T.A., 1897, Pt. I, s. 3; A.E.A., 1925, s. 36 (4)). Unless, therefore, it can be said that the legal estate passed by lapse of time (which is not suggested) the position on the 1st January, 1926, was that the legal estate was still in B as administratrix of A, while the beneficial interest was in B and in D and E as trustees for D and F. On the assumption that the dower had not been assigned by metes and bounds the doweress had an equitable estate in one-third for life, and thus the property was held upon a basis of undivided shares, with the result that on the 1st January, 1926, the legal estate vested in B upon the statutory trusts (L.P.A., 1925, Sched. I, Pt. IV, para. 1 (1)), and is still so vested. B has such powers of mortgage as are possessed by a life tenant (L.P.A., 1925, s. 28 (1)), and in so far as they are not sufficient these powers can be extended by the concurrence of all those beneficially interested. An additional trustee must be appointed, and it might prove convenient for B to retire and for two new trustees to replace her (L.P.A., 1925, s. 27 (2)). We suggest that the two trustees should mortgage (without giving any covenant for the payment of principal and interest) at the request and by the direction of B, D and E, and D and F, and that D and F, and possibly also B, should covenant for the payment of principal and interest.

### Scope of Newspaper Accident Insurance.

*Q.* 2597. A was registered with a weekly newspaper under their free insurance scheme, and it may be assumed that he complied with all the requirements as to registration, etc. One of the conditions attached to the registration certificate issued by the newspaper is as follows: "A registered reader shall mean, any person over 15 years of age who has paid the appropriate subscription as a postal subscriber to the '————' or who has personally signed and forwarded to the '————' registration department, the prescribed Registration Form and also a signed order to a Newsagent for the regular and uninterrupted weekly delivery of the '————' which has been continuously received and paid for, provided always that a Registered Reader over 70 years of age shall be entitled to all the benefits except those payable in respect of a Fatal accident." A was fatally injured in a street accident in 1932. At the time when A first registered with the newspaper, namely 1925, he was under the age of 70 years, but at the time of the accident, namely 1932, he was over seventy years of age. A's dependents contend that when A first

became a registered reader, he was under seventy years of age, and therefore entitled to all benefits, although he may have been over seventy years of age when the fatal accident happened. The newspaper contends that the vital date is the date of the accident, and that therefore A was precluded from the benefits payable in respect of a fatal accident.

*A.* The interpretation suggested by the dependents involves a rigid construction of the policy by reference to a past date, whereas the policy is a continuing contract, the conditions of which are capable of variation. The duration of the risk is limited in certain respects, e.g., the liability for fatal accidents ceases at the age of seventy. There is no waiver of this condition by the continued acceptance of premiums, as certain of the benefits could still have been claimed—even after the age of seventy. The opinion is therefore given that the vital date is the date of the accident, and that A's dependents are precluded from the benefits.

### Liability for Repairs to Motorcycle.

*Q.* 2598. A, the owner of a motorcycle and B his passenger had an accident in which the motorcycle was damaged. A and B took the motorcycle to a garage which estimated the cost of repairing it at £30. B thereupon signed a letter addressed to the garage proprietor Z asking that half the cost of the repairs be debited against him. At that time Z told A that if B did not pay his half share A would be liable for the whole. The repairs were completed and Z delivered bills to A and B. A's account included other items, and it became necessary to obtain judgment against him (by default) before payment was eventually made. In the meantime B was sued for £15 and judgment obtained against him (by default), but Z has been unable to enforce the judgment. Z has now sued A for £15 for "the price of goods sold and delivered and work done." A has entered a defence stating that the debt was incurred by B who has already been sued. (1) Is this defence good. In your reply would you please give references to text books and cases. (2) If the defence is good, can Z strengthen his position in any way by amending the particulars of claim, and if so, how?

*A.* The stipulation by Z that, if B did not pay his half share, A would be liable for the whole—prevented the formation of a joint contract by A and B to pay for the repairs. In other words, Z reserved his rights against A, who remained severally liable for the whole amount. As the judgment against B is unsatisfied, Z can still sue A, in accordance with the decisions mentioned in *Isaacs and Sons* v. *Sallastein* [1916] 2 K.B., at the foot of p. 151, and the top of p. 152. See also the judgment of Bankes, L.J., at the top of p. 155. The opinion is therefore given that: (1) The defence is not good, in view of the judgments in the above case. (2) No amendment of the particulars of claim is necessary.

### Registered Title—Whether Lease overriding Interest.

*Q.* 2599. A.B. is the registered proprietor of land in London, with an absolute title under the Land Registration Act, 1925. He has just granted a lease of this land for fourteen years without fine at a rack rent. This lease contains an option on the part of the lessee for a further lease for fourteen years and also contains an option to purchase at an agreed price at any time during the first fourteen years. Is this lease an overriding interest within the meaning of s. 70 (1) (*k*) of the Land Registration Act, 1925, and therefore, incapable of registration under s. 48 of the same Act against the registered proprietor, and is the lessee sufficiently protected by his lease in respect of the two options without any such registration, or should any, and if so what, registrations be made in favour of the lessee against the registered proprietor?

*A.* Section 70 (1) (*k*) only protects leases which cannot continue beyond twenty-one years. Section 70 (1) (*g*) preserves the rights of the occupier (such as options for lease or to purchase) as overriding interests following the principle laid down in *Hunt* v. *Luck* [1902] 1 Ch. 428, but protects a purchaser who has made due enquiries, and has not received full information. It cannot be said, therefore, that the lease in question is necessarily an overriding interest—it is only contingently so. Registration therefore should be allowed and is expedient, but so long as the lessee remains in occupation he can, even though the lease is unregistered, claim the benefit of para. (*g*).

### Trust for Sale—One Trustee Bankrupt—Sale—Position.

*Q.* 2600. In your issue of 25th June, 1932, p. 456, "Answers to Correspondents," *Q.* 2506, it is assumed that a bankrupt trustee is "unfit to act" within the meaning of s. 36 of the Trustee Act, 1925, and this is in accordance with the notes on that section in "Wolstenholme and Cherry's Conveyancing Statutes" (11th ed., Vol. II, p. 407). We have, however, recently at the instance of a client, taken counsel's opinion on the same point, and he advises that the point has never been decided and must be considered doubtful so far as appointments otherwise than by the court are concerned.

*A.* We are obliged to our correspondents for the information contained in their letter. Counsel is no doubt correct, but the indications are that a bankrupt trustee would be held to be "unfit to act."

### Previous Judgment not *Res Judicata*.

*Q.* 2601. X, a tradesman, supplied goods to a shop and, failing to obtain payment, issued a writ against Y, who managed the shop, and obtained judgment in default of appearance. X subsequently learned that Y was not of age, and he failed to recover any money under his judgment. X has now issued a writ against Z in respect of the same goods. Apart from the merits of the case, can Z set up X's judgment against Y, as a complete defence to the claim made against him?

*A.* The judgment in *X.* v. *Y.* is no defence in the case of *X.* v. *Z.* See *Isaacs & Sons Lim.* v. *Salbstein and Another* [1916] 2 K.B. 139.

### Abandonment of Premises by Tenant.

*Q.* 2602. A is the tenant of a house belonging to B on a monthly tenancy of 6s. per week, payable at the end of every four weeks. The rent was paid up to 2nd July. On 23rd July the tenant disappeared, leaving the key in the door, and has not been seen or heard of since. The key of the premises is at present with the tenant's married daughter who lives near. The tenant's furniture can be seen in the house. The landlord wishes to recover possession. Under s. 138 of the County Courts Act, 1888, notice to quit must first be served on the tenant. We take it that nailing or posting the notice to quit on the premises is not sufficient, and there is no one on the premises representing the tenant. How can this notice be effectively served? Or can you suggest any other method of recovering possession of the premises?

*A.* There appears to be no means of proving the receipt by the tenant of notice to quit, and nailing or posting the same on the door is therefore insufficient. As notice to quit cannot be effectively served, it will be necessary to proceed under the Distress for Rent Act, 1737, and the Deserted Tenements Act, 1817. The conditions are that (1) the rent shall be three-fourths of the yearly value; and (2) a half-year in arrear; (3) no sufficient distress shall be found. The latter is the difficulty, as the furniture can be seen in the house, but it may be possible to satisfy the magistrates (to whom an application for possession must be made) that the value of the furniture is less than six months' rent. It is not necessary to levy a distress to prove this, and the value may be proved *aliunde*, as in *Rickett* v. *Green* [1910] 1 K.B. 253. That was a case under the County Courts Act, 1888, s. 139, which is not apparently applicable to the present case, as the question does not state that B has a right of re-entry for non-payment of rent.

## In Lighter Vein.

THE WEEK'S ANNIVERSARY.

Sir James Knight-Bruce died at Roehampton Priory on the 7th November, 1866, a fortnight after his resignation from the Court of Appeal in Chancery. In his early days at the Bar he is said to have shown considerable skill in handling juries on the Welsh Circuit, but eventually he elected to confine himself to the calm, secluded vale of Chancery. In 1841 he was appointed a Vice-Chancellor and knighted, and from the first showed great judicial ability. However, when the illness of his two colleagues just before the Long Vacation of 1850 threw the whole work of the court on his hands at the most pressing time of the year, he acquitted himself so brilliantly as to earn a public tribute from the Attorney-General and to mark himself out for further promotion. Consequently when the Court of Appeal in Chancery was established next year he was appointed to a seat in it. Lawyers in search of a little light reading could do worse than turn up his judgments in the reports, for he possessed wit, sarcasm and a polished style of expression. His court, therefore, was never dull, and he had an amusing habit of sending down notes to counsel engaged before him. Thus, during a case which had called forth some allusion to the effect of a certain preacher's eyes on his female auditors, the judge sent down the following translation of a French epigram :—

" The curate's eyes our ladies praise :
I never see their light divine ;
He always shuts them when he prays,
And when he preaches closes mine."

BIRKENHEAD IN DEBATE.

The unveiling of a bust of the late Lord Birkenhead in the Debating Hall of the Oxford Union Society irresistibly recalls a scene which occurred once when the great man visited Oxford to speak in a presidential debate. Mr. Dingle Foot, who was at the time Treasurer of the Union, was brave enough to put into his speech the apocryphal story of how when Sir John Simon and " F.E." were undergraduates together they tossed up to decide which party each should join as there was not room in one party for two such colossal personalities. Later in the debate, Lord Birkenhead turned the point against his young opponent. " I don't care a rap," he said, " what the Treasurer thinks of me. But what Sir John Simon will say when I tell him that one of his young supporters in Oxford considers that he based his political principles on the vagrant eccentricities of a coin, I shudder to conceive ! "

SILENCE IN COURT.

Recently when Mr. Justice Luxmoore excused himself for interrupting the argument of a well-known Chancery " silk " with comments, the leader replied that nothing is more difficult than to address a judge who never says a word, and recalled eminent judges of the past who never gave any indication what impression (if any) an argument was making on them. The first prize for taciturnity clearly goes to Sir William Grant, M.R., who is said to have sat through a two days' hearing to the conclusion of the argument before he exploded the whole case with one sentence : " Gentlemen, the Act on which the pleading has been founded is repealed."

AN ARTISTIC JUDGE.

It is interesting to hear that some Queen Anne and Chippendale furniture once the property of Mr. Justice Day is shortly to be sold at Christie's. Twenty-three years ago the sale of his pictures—mainly of the modern Dutch and Barbizan artists—astonished London and was acknowledged to be " quite the most remarkable event of its kind which has ever occurred in this country." Pictures which he had picked up for a few guineas fetched in some cases twenty to a hundred times the price originally paid. The whole realised £95,000, but this should be whispered low, for in his lifetime when a dealer would try to discuss with him anything so irrelevant as picture values his reply was : " Millet starved, Rousseau nearly broke his heart." Once when some commercially minded person dared to ask in connection with one of his treasures : " How many thousands did they say ? " the great collector turned on him with a look which shrivelled up the whole topic. He never bought speculatively and here was a startlingly poetic side of a personality which from another angle was rigid and severe to excess.

## Obituary.

SIR W. CLARKE HALL.

Sir William Clarke Hall, who had been a Metropolitan magistrate since 1913, died suddenly on Friday, the 28th October, at Horning, Norfolk, at the age of sixty-six. Born at Durham in 1866, he was educated at Christ Church, Oxford, and was called to the Bar by Gray's Inn in 1889. He became a Bencher of his Inn in 1917, and was Treasurer in 1926. He was appointed a Metropolitan magistrate in 1913, and took his seat at the Thames Court. The following year he was transferred to Old Street, and had remained there since. He received the honour of knighthood in the New Year's list at the beginning of this year.

MR. P. A. KOPPEL.

Mr. Percy Alexander Koppel, Counsellor in the Diplomatic Service, died in London on Monday, the 31st October, at the age of fifty-five. Educated at Bradfield and Magdalene College, Oxford, he was called to the Bar by the Inner Temple in 1900, and joined the Northern Circuit. He rendered services in the Political Intelligence Department of the Foreign Office during the War, and in 1920 he was appointed a first secretary in the Diplomatic Service, becoming a counsellor in 1925. He was made C.M.G. in 1928.

MR. J. W. C. DAYNES.

Mr. John William Crook Daynes, retired solicitor, of Norwich, died on Saturday, the 29th October, at his home at Brundall, at the age of seventy-four. He served his articles with the late Mr. I. B. Coats, and was admitted a solicitor in 1879. For sixteen years he was in partnership with the late Mr. Benjamin Bavin as Messrs. Bavin & Daynes, of Norwich, and when Mr. Bavin retired in 1895, he carried on the practice, afterwards taking into partnership his son Mr. Gilbert W. Daynes, and Mr. W. E. Keefe. Mr. Daynes was solicitor to the Norwich District Building Society from its foundation until his retirement from business owing to ill-health at the end of 1929.

MR. E. H. GOODWIN.

Mr. Edward Henry Goodwin, solicitor, partner in the firm of Messrs. W. J. Read & Son & Goodwin, of Blackpool, died at his home at Blackpool on Monday, the 24th October, at the age of fifty-eight. He was admitted a solicitor in 1898, and practised in Walsall for some years. He removed to Blackpool for health reasons and joined Mr. W. J. Read in 1917. He became a partner in the firm in 1925.

MR. A. HUNTER.

Mr. Andrew Hunter, solicitor, of Falkirk, died at his home there on Saturday, the 22nd October, at the age of fifty-eight. Mr. Hunter, who was admitted a law agent in 1897 and a notary public in 1913, was senior partner in the firm of Marshall, Hunter & Dean, solicitors, of Falkirk.

---

**The Rt. Hon. William Joynson-Hicks, Viscount Brentford, Bt., solicitor, of St. James's-square, of Newick Park, Sussex, and of Norfolk-street, W.C., left estate of the gross value of £67,661, with net personalty £53,247.**

# Notes of Cases.

## High Court—Chancery Division.

### *In re* Jackson: Beattie *v.* Murphy.

Farwell, J. 21st October.

WILL—AMBIGUITY—GIFT TO "NEPHEW"—THREE PERSONS OF SAME NAME—EVIDENCE AS TO PERSON INTENDED.

This was an originating summons taken out by the executor of the late Mrs. Jackson, who died on 30th May, 1928, and by her will, dated 21st September, 1921, left the residue of her estate to trustees upon trust for "my brothers William Murphy and Arthur Murphy my sisters Ellen Skerrit and Jane McPhillips and my nephew Arthur Murphy in equal shares." At the death of the testatrix there were three living persons answering the description of "my nephew Arthur Murphy," and the question was which of the three was entitled to the one-fifth share of residue. Of those three persons two were legitimate sons of the testatrix's brother, but the third was an illegitimate son of a sister of the testatrix, Margaret Murphy, and he was married to a niece of the testatrix. For the illegitimate nephew it was contended that although *In re Fish* [1894] 2 Ch. 83, would have been conclusive if there had been only one legitimate nephew, yet as there were two an ambiguity arose which entitled the court to receive extrinsic evidence of the testatrix's real intention. The next of kin contended that the gift was void for uncertainty.

FARWELL, J., said the question was not covered by authority. It was clear on authority that *primâ facie* an illegitimate relative could not claim against a legitimate relative. But as there were here two legitimate nephews an ambiguity existed and evidence could be received to show who was the person intended. He had come to the conclusion that the word "nephew" was not used by the testatrix in the strict legal sense, and that the son of Margaret Murphy was the person entitled to the one-fifth share of the residue.

COUNSEL: *L. F. Mumford, A. H. Droop, L. B. Tillard, W. Barton, H. Graham.*

SOLICITORS: *Speechly, Mumford & Craig,* for all parties.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

### *In re* Grosvenor Estates Settlement: Duke of Westminster *v.* McKenna.

Eve, J. 25th October.

SETTLED LAND—TENANT FOR LIFE—POWER TO GRANT BUILDING LEASES—NO TIME LIMIT FOR REBUILDING—SETTLED LAND ACT, 1925, ss. 41, 44.

This was an originating summons raising the important question whether a tenant for life of settled land has power to grant building leases although no limit of time is prescribed for the building or rebuilding. The question was raised as to a house on the Grosvenor Estates in Carlos Place, W. The summons asked whether the plaintiff had power to grant a lease for 999 years on having a surrender of the existing lease of which some fifty-seven years were unexpired. The lease was to contain a covenant by the lessees, when necessary or when required by the estate surveyor, to rebuild the premises in every way appropriate to the circumstances. All parties interested in the estate supported the application.

EVE, J., in a considered judgment, held that the tenant for life, the Duke of Westminster, had the power claimed. It was not suggested that the proposed lease did not conform to the statutory provisions regulating leases generally, and the evidence filed in favour of creating long terms rather than effecting sales was not challenged. But it was conceded that the covenant to rebuild when required might not become effective for a century or more, and in those circumstances a doubt had been raised whether such a lease was a building lease within the Act in that it fixed no limit of time within which it was to be erected. In his lordship's opinion the absence of the limit did not invalidate the lease. The conclusion was, he thought, inevitable that the Legislature did not intend to impose on a tenant for life the obligation of obtaining from his lessee a covenant to begin building within a specified time. There would be a declaration to that effect as asked by the summons.

COUNSEL: *Gavin Simonds,* K.C., and *Baden Fuller; C. J. Radcliffe; M. G. Hewins; Walter Hart.*

SOLICITORS for all parties, *Boodle, Hatfield & Co.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

### *In re* Societe Intercommunale Belge d'Electricite, Feist *v.* The Company.

Eve, J. 27th October.

FOREIGN BOND—BELGIAN COMPANY—REPAYMENT IN GOLD—LEGAL TENDER IN UNITED KINGDOM.

This was an adjourned summons in which the plaintiff was the holder of a 35-year sinking fund 5½ per cent. gold bond for £100, part of an issue of £500,000, dated 25th September, 1928, made by the defendants, a limited company under Belgian law. The plaintiff asked for the following declarations: (1) that on the true construction of the bond the defendants warranted to discharge their obligation by tendering in payment of the principal and interest gold coin of the United Kingdom to the appropriate amount equal to the standard of weight and fineness existing on 1st September, 1928; and (2) that the defendants were bound to pay such a sum in sterling as would be sufficient to purchase on the day of payment gold of not less weight and fineness than that contained in the gold coin of the United Kingdom which would have sufficed to discharge such payment if falling due on 1st September, 1928. The first paragraph of the bond provided that the company would on 1st September, 1963, or on such earlier day as the principal moneys became payable in accordance with the conditions endorsed thereon pay to the bearer the sum of £100 in sterling in gold coin of the United Kingdom of or equal to the standard of weight and fineness existing on 1st September, 1928.

FARWELL, J., in delivering judgment, said it was clear, apart from the paragraph referred to, that the document was one to secure the payment of £100 and nothing more. It was not one to secure an unascertained sum. If there was an obligation to pay £100 in gold currency, was that obligation one on which the plaintiff could insist, or did the defendants satisfy the obligation if they tendered £100 in any form which was legal tender in England? In his lordship's judgment the defendants did satisfy their obligation in that way. If they tendered that sum in whatever happened to be legal tender at the time when the sum became due they discharged their obligation. There would be a declaration to that effect.

COUNSEL: *Lionel Cohen,* K.C., and *C. J. Radcliffe; Gavin Simonds,* K.C., and *H. S. G. Buckmaster.*

SOLICITORS: *Allen & Overy; Stephenson, Harwood and Tatham.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

## High Court—King's Bench Division.

### Rex *v.* Special Commissioners of Income Tax: *Ex parte* Horner.

Lord Hewart, C.J., Avory and Du Parcq, JJ. 14th October.

REVENUE—INCOME TAX—LIFE INSURANCE PREMIUMS PAID BY LOAN FROM INSURANCE COMPANY—AMOUNT DEDUCTED AT MATURITY—REPAYING A LOAN—NOT PAYING PREMIUMS—INCOME TAX DEDUCTION DISALLOWED—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), s. 32.

This was a rule *nisi* for *mandamus,* granted to Joshua Alfred Horner, commanding the Special Commissioners of Income Tax to admit his claim to £11 16s. 3d., being income tax at the appropriate rate of 2s. 3d. in the pound on a sum of £105

claimed to be the amount of premiums paid by him for an assurance on his life. Horner, by a policy of assurance, dated the 9th May, 1911, assured his life with the London Life Association for £500 at a yearly premium of £31 15s. The contingency assured against was his survival until the 9th May, 1930, or his previous death. It was provided among the conditions of the policy that the association might at any time advance moneys for the payment of any sum necessary to prevent the lapsing or avoidance of the policy, any such advances and interest to be a first charge on the policy. In pursuance of a special condition the association advanced to Horner £15 towards the payment of the annual premium of £31 15s. for each year down to the 9th May, 1917, inclusive, amounting in all to £105. The subsequent premiums were duly paid by Horner. On the maturing of the policy in May, 1930, the association paid Horner the £500, less the £105, and a further sum he had borrowed. On the 2nd May, 1931, Horner preferred a claim for the fiscal year ended the 5th April, 1931, for relief from income tax in respect of premiums paid by him on the policy, namely, the £105 advanced to him by the association to keep the policy alive. That claim was rejected by the Inspector of Taxes, and subsequently by the Special Commissioners.

Lord HEWART, C.J., said that Horner did not pay the premiums each year in full, but borrowed the money from the association, and at maturity a sum of £105 was deducted from the amount of the policy. The words of s. 32 of the Income Tax Act, 1918, as amended, were: "Any person who has made an insurance on his life . . . shall, subject as hereinafter provided, be entitled to have the amount of tax payable by him reduced by a sum representing tax at the appropriate rate on the amount of the premium paid by him for any such insurance." The important words were "the premium paid by him," and in suffering a deduction of £105 at maturity Horner was not paying a premium, but repaying a debt. That was sufficient to dispose of the matter. He also referred to passages from Lord Halsbury and Lord Macnaghten in *Hunter* v. *Rex* [1904] A.C. 161, to support that view, and said that the rule would be discharged.

AVORY and DU PARCQ, JJ., agreed.

COUNSEL: *R. P. Hills* (the Attorney-General, Sir Thomas Inskip, K.C., with him) for the Crown, showed cause; *Cyril King* supported the rule.

SOLICITORS: *Solicitor of Inland Revenue; Druces & Attlee.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

## Court of Criminal Appeal.

### Rex *v.* Starkie.

Lord Hewart, C.J., Avory and Goddard, JJ. 17th October.

CRIMINAL LAW—PREVIOUS CONVICTIONS—CROSS-EXAMINATION—CHARACTER PUT IN ISSUE.

This was an application by Richard William Starkie for leave to appeal against his conviction at the Central Criminal Court last July of using an instrument with intent to procure miscarriage. He was sentenced by Roche, J., to eighteen months' imprisonment.

The judge at the trial, said counsel for the applicant, had allowed him to be cross-examined as to a previous conviction in 1921 for administering drugs with intent to procure miscarriage. The applicant's counsel at the trial had elicited the fact that he had originally been a qualified doctor and had been struck off the medical register, but, contended counsel now appearing for the applicant, that did not amount to putting the prisoner's character in issue, and the cross-examination ought not to have been allowed.

GODDARD, J., in giving the judgment of the court, said that in their opinion the applicant was rightly cross-examined as to his previous character, because his character had been put in issue by stating that he had been a registered medical practitioner who had fallen foul of the Medical Association. There was evidence on which the jury were entitled to find as they did, and the application would be dismissed.

COUNSEL: *J. F. Eastwood* for the applicant; the Crown was not represented.

SOLICITOR: *C. S. Tomlinson.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

## TABLE OF CASES previously reported in current volume.—Part II.



# Parliamentary News.

## Progress of Bills.

### House of Lords.

Aberdeen Harbour Order Confirmation Bill.
Read First Time. [1st November.

Administration of Justice Bill.
In Committee. [2nd November.

Edinburgh Royal Maternity and Simpson Memorial Hospital Order Confirmation Bill.
Read First Time. [1st November.

Falkirk and District Traction Order Confirmation Bill.
Read First Time. [1st November.

MacDuff Harbour Order Confirmation Bill.
Read First Time. [1st November.

Visiting Forces (British Commonwealth) Bill.
Reported without Amendment. [2nd November.

### House of Commons.

Dumfermline and District Traction Order Confirmation Bill.
Read Third Time. [2nd November.

Land Values Rating Bill.
Read First Time. [2nd November.

Ottawa Agreements Bill.
Reported without Amendment. [2nd November.

Portsoy Harbour Order Confirmation Bill.
Read First Time. [31st October.

## Questions to Ministers.

### SOLICITORS BILL.

Sir A. M. SAMUEL asked the Attorney-General whether he has yet received from The Law Society the draft of the Solicitors Bill; and, if so, whether he will consult with the various sections in the House in order that the Bill may be an agreed Measure and be given facilities for an early passage through Parliament.

The SOLICITOR-GENERAL (Sir F. Boyd Merriman): The answer to the first part of the question is in the affirmative. I have also been informed that the Council of The Law Society have empowered their Parliamentary Committee to take steps to secure the early introduction of the Bill into Parliament and its passage into law.

Sir A. M. SAMUEL: Do the Government propose to give facilities if it is an agreed Bill?

The SOLICITOR-GENERAL: I think it would be better to wait and see whether it is in truth an agreed Bill.

[31st October.

### SUPREME COURT (NEW PROCEDURE RULES).

Mr. CHALMERS asked the Attorney-General if he can yet estimate the success of the New Procedure Rules of the Supreme Court; what proportion of cases are tried under them; and whether any reduction in the cost of litigation results from their use.

The ATTORNEY-GENERAL: I am much obliged to my hon. Friend for putting down this question. The New Procedure Rules are working smoothly and efficiently. Since 24th May, when the Rules came into force, 93 actions in the new procedure list have been tried, as against 347 in the ordinary list. Both the judges who are taking cases in the new procedure list are fully engaged upon them. Few taxations of costs have so far taken place, but from such information as is available it appears that some reduction in the cost of litigation has resulted.

Mr. CHALMERS: In view of that success, and of the apparent reduction in the cost of litigation, will the Attorney-General consider extending these Rules to other forms of action, and particularly to the county courts?

The ATTORNEY-GENERAL: I will call the Lord Chancellor's attention to my hon. Friend's suggestion. [2nd November.

### COMMISSIONERS OF ASSIZE.

Mr. TURTON asked the Attorney-General (1) how many commissioners of assize have, since October, 1931, been appointed to the North-Eastern and Northern Circuits; and how many to other circuits in England and Wales;

(2) How many commissioners of assize have been appointed since October, 1931; and what has been the expenditure entailed by such appointments.

The ATTORNEY-GENERAL (Sir Thomas Inskip): Four commissioners of assize have been appointed since October, 1931, at a total cost of £1,232 1s. 5d. These include the appointment of one commissioner for the Northern Circuit and one for the North-Eastern Circuit.

Mr. TURTON: Will the Attorney-General consider the advisability of appointing an extra judge to do this work at assizes, in order to add to the dignity of the Judicature travelling on circuit?

The ATTORNEY-GENERAL: The question whether new judges should be appointed has often been discussed by the House. I am glad to hear that my hon. Friend is in favour of it. [2nd November.

## Rules and Orders.

THE PATENTS APPEAL TRIBUNAL FEES ORDER, 1932. DATED OCTOBER 26, 1932.

The Lord Chancellor, the Judges of the Supreme Court, and the Treasury, in pursuance of the powers and authorities vested in them respectively, by section 92A of the Patents and Designs Act, 1907,(*) section 213 of the Supreme Court of Judicature (Consolidation) Act, 1925,(†) and sections 2 and 3 of the Public Offices Fees Act, 1879,(‡) do hereby, according as the provisions of the above-mentioned enactments respectively authorise and require them, make, advise, consent to, and concur in, the following Order:—

1. A fee of £3 shall be taken upon the filing of every notice of appeal to the Appeal Tribunal constituted under section 92A of the Patents and Designs Act, 1907.

2. Where it appears to the Lord Chancellor that the payment of the fee prescribed by this Order would, owing to the exceptional circumstances of the particular case, involve hardship, the Lord Chancellor may, with the concurrence of the Treasury, reduce or remit the fee in that particular case.

3. The fee prescribed by this Order shall be taken by a judicature fee stamp impressed on the notice of appeal.

4. The Interpretation Act, 1889,(§) shall apply for the purposes of this Order as if it were an Act of Parliament.

5. This Order may be cited as the Patents Appeal Tribunal Fees Order, 1932, and shall come into operation on the 1st day of November, 1932.

Dated the 26th day of October, 1932.

*Sankey*, C. *Hanworth*, M.R.
*Hewart*, C.J. *Fairfax Luxmoore*.
Lords Commissioners of His Majesty's Treasury. *Austin Hudson*. *Walter J. Womersley*.

* 7 E. 7. c. 29. † 15–6 G. 5. c. 49. ‡ 42–3 V. c. 58. § 52–3 V. c. 63.

THE CHILDREN AND YOUNG PERSONS ACT, 1932 (DATE OF COMMENCEMENT) ORDER (No. 1), 1932, DATED OCTOBER 21, 1932.

Whereas by subsection (3) of section 90 of the Children and Young Persons Act, 1932,(*) (hereinafter called "the Act"), it is enacted that the Act shall come into operation on such date as the Secretary of State may appoint and that the Secretary of State may appoint different dates for different purposes and different provisions of the Act:

Now therefore I, the Right Honourable Sir John Gilmour, Baronet, one of His Majesty's Principal Secretaries of State, hereby order as follows:—

1. The provisions of the Act specified in the first column of the First Schedule to this Order shall come into operation for the purposes specified in the second column of that Schedule on the first day of November, One thousand nine hundred and thirty-two.

2. The provisions of the Act specified in the first column of the Second Schedule to this Order shall come into operation for the purposes specified in the second column of that Schedule on the first day of January, One thousand nine hundred and thirty-three.

3. The Interpretation Act, 1889,(†) applies for the purpose of the interpretation of this Order as it applies for the purpose of the interpretation of an Act of Parliament.

4. This Order may be cited as "The Children and Young Persons Act, 1932, (Date of Commencement) Order (No. 1), 1932."

*John Gilmour*,
One of His Majesty's Principal Secretaries of State.

Whitehall.
21st October, 1932.

* 22-3 G. 5. c. 46. † 52-3 V. c. 63.

SCHEDULES.

FIRST SCHEDULE.

| Provisions of the Act. | Purposes for which provisions are to be brought into operation. |
|---|---|
| Sections sixty-four and seventy-nine .. .. | For all purposes. |
| Section eighty-eight .. .. | For the purpose of effecting such repeals in the Children (Employment Abroad) Act, 1913, as are mentioned in the Fourth Schedule to the Act. |

SECOND SCHEDULE.

| Provisions of the Act.. | Purposes for which provisions are to be brought into operation. |
|---|---|
| Part V .. .. .. | For all purposes. |
| Sections seventy-seven and eighty-eight .. .. | For the purpose of effecting such amendments and repeals in Part I of the Children Act, 1908, as are mentioned in the Second and Fourth Schedules to the Act. |

## Societies.

### The Law Society.

PRELIMINARY EXAMINATION.

The following Candidates (whose names are in alphabetical order) were successful at the Preliminary Examination held on the 12th and 13th October, 1932.

Cyril Norman Astill, Brian Gurney Benham, Alan Rutherford Bennett, Leslie Milburne Blome-Jones, William Boys, James Luke Brady, Allan Herdman Brown, Reginald William Ewart Burgess, John Blandford Callinan, Robert Calverley, Leslie George Cartwright, Charles Herbert Chappell, Ralph Harmar Collins, Philip Matthew Crosse, Cyril Thomas Crowe, Harold Woodhouse Daughtrey, Reginald Flint Davenport, Frederic Norman Shipley Edwards, Antony Arthur Walter Ellis, James Henry Fellowes, Robert Greenall Fingland, Graham Alexander Foulds, Geoffrey Allison Hurst, William Sydney Kersey, David Ferguson King, Richard Neville Lancaster, James Ashworth Lord, Alfred William

Masser, Clifford Annesley Mudie-Smith, John Garrard Page, Joseph Parry, Michael Logan Prior, Noel Stafford Robinson, Lancelot Francis Romney, Dawson Rothwell, Peter Robert Savage, Michael Shaweross, Clifford William Smith, Peter Claude Sneath, Eric Bracegirdle Stott, Clifford Louis Symons, John Lowell Tetlow, Edward Kenneth Truman, John Renshaw Beckit Truman, George Charles Wade, Gordon Frederick Walls Roy Kingsley Ettwell Weaver, George Winterbottom, Thomas Henry Guppy Wood, Douglas Alexander Young-James.

No. of Candidates, 128. Passed, 50.

## United Law Society.

A meeting of the Society was held in Middle Temple Common Room on 31st October, at which there was an attendance of twenty. Mr. H. S. Palmer was in the chair. The motion for debate was "That in the opinion of this House it would be beneficial to Great Britain and the rest of the Empire if Mr. de Valera were to succeed in his professed aim of converting Ireland into a free republic." Mr. R. S. Johnson opened, and Mr. F. W. Yates opposed. Messrs. Everitt, Redfern, Habershon, McQuown, Bell, Jameson, Nevinson, Hall, Oppenheim, Wood-Smith, Halpin, Bull and Owens addressed the House. After reply by the opener, the motion was lost by six votes to eleven.

AGENDA.

Monday, 7th November, 1932.—Debate: "That in the opinion of this House the sterilization of the unfit is a necessary piece of legislation." Opener, Mr. B. H. Dulanty; Opposer, Mr. J. F. Marnan.

Monday, 14th November, 1932.—Debate: "That in the opinion of this House the case of *British Thomson-Houston Ltd.* v. *Federated European Bank Ltd.* [1932] 2 K.B. 176, C.A., was wrongly decided." (Circumstances in which persons dealing with a company may presume that a director is authorised to act for the company.) Opener, Mr. J. A. Plowman; Opposer, Mr. T. R. Owens.

Monday, 21st November, 1932.—Debate: "That in the opinion of this House a man should be entitled to take his own life without fear of incurring the penalty of the law if he fails in his objective." Opener, Mr. J. MacMillan; Opposer, Mr. S. E. Redfern.

Monday, 28th November, 1932.—Debate: "That in the opinion of this House the case of *Oliver* v. *Birmingham and Midland Motor Omnibus Co. Ltd.* (1932) 48 T.L.R. 540, was wrongly decided." (Negligence—Contributory negligence—Child—Contributory negligence of person in charge—Whether defence to action by child.) Opener, Mr. S. A. Redfern. Opposer, Mr. R. E. Ball.

The Annual Dinner of the Society will be held on Monday, 12th December, 1932, at the Café Monico. The Right Hon Lord Wright will preside.

## Solicitors' Managing Clerks' Association.

CHARITIES AS AFFECTING THE CHANCERY DIVISION.

A meeting of this association was held at Lincoln's Inn Hall on 28th October. Mr. Justice Eve took the chair, and Mr. C. D. Myles read a paper with this title. He proposed, he said, to deal only with wills and settlements by deed, and not to touch on questions of examining title or of hostile litigation. He asked the audience to suppose that they were in charge of the winding-up of the estate under a will, which contained a number of dispositions, some of which were obviously charitable and others of which called for some consideration before they could be definitely placed within the class of charitable gifts. He warned the association that charity in legal terminology bore no relation to charity in the English language, and that a trust for benevolent purposes was not necessarily charitable. The legal meaning of the word "charity," originally laid down in the Statute of Elizabeth, comprised, he said, trusts for the relief of poverty, the advancement of education or religion, and other purposes beneficial to the community. This classification applied only to public trusts.

Trouble often arose because the name of the society given in the will did not exactly correspond to that of any society in existence. If the society named in the will had existed but had come to an end before the death of the testator, the summons should raise the question of whether the gift disclosed a general charitable intention or merely an intention to benefit the particular named society. If a general intention were disclosed, the gift would be administered *cy près*, and the summons should therefore ask for the settlement of a scheme; if no general intention were disclosed the gift would fail. If the summons were taken out by the executors as plaintiffs, the defendants would be the Attorney-General to represent charity, and the residuaries or the next of kin to argue against the general intention. If, however, the charity had ceased to exist after the death of the testator the Crown would apply the gift for a charitable purpose, even though no general charitable intention had been expressed: *Re Slevin* [1891] 2 Ch. 236. The only relief for which the summons need ask was the settlement of a scheme, and the Attorney-General would be the defendant, but in many cases it was desirable to join the residuaries or the next of kin.

Where two or more societies having somewhat similar names to that in the will claimed the legacy, evidence was admissible of the testator's intention. The executors would have to discover the existence of the various claiming societies and eliminate those clearly not entitled; they should also try to ascertain which of the societies the testator knew about or subscribed to, or whether any of them was in existence when the testator lived in its neighbourhood. The collection of this evidence might be very troublesome. If the executors could obtain but little useful evidence, they should go with it to the court, which might direct an enquiry into the object intended by the testator, or settle a scheme, or divide the fund.

When the executors could not find a society with a name anything like that in the will, the question arose of whether the gift disclosed a general charitable intention or was a gift merely to the particular named society. In the former case the gift would not fail, in the latter it would. The summons would therefore raise the question if the will left any doubt; the Attorney-General would defend in favour of the general intention and the residuaries or next of kin would argue to the contrary.

THE *cy près* DOCTRINE.

If the will disclosed a general charitable intention but the particular mode failed for any reason, the court would carry out the general intention in a manner as near as possible to that indicated. This doctrine was applied if the objects of the gift were originally impracticable or if they subsequently failed. Unless the only modifications required were quite simple and could be ordered by the court, a scheme would be needed. Mr. Myles emphasised the danger, in a case where the will left a gift to a charity and specified an object which the trustees of the charity considered inconvenient, that the charity might lose the gift altogether through the misguided use by witnesses on its behalf of the word "impracticable." He did not suggest, he said, that members of the association should seek to persuade clients to "fake" their evidence, but advised them to take great care that witnesses did not misuse language. For instance, in a case which had come before the Chancery Division recently, a testatrix had left a sum of money for the erection of a cripples home in a locality "Blackhurst"; the governing body had taken the view that, while "Blackhurst" was not a suitable locality for a cripples' home, "Whitehurst" was eminently suitable. Judging from the views expressed in the correspondence, it would have been quite easy to obtain an affidavit stating that to build a cripples' home at "Blackhurst" was "impracticable." In point of fact it would really have been quite practicable to build the home at "Blackhurst," though "Whitehurst" was a more suitable place. The evidence had been carefully framed and the court had approved of the building of a home at "Whitehurst." If the evidence had declared that the testator's direction was impracticable, and the will had not disclosed a general paramount intention of charity, the society might have been sent empty away leaving the next of kin rejoicing.

LAND GIVEN TO CHARITIES.

Mr. Myles then dealt at length with the questions raised when land was given to a charity by will and by settlement under deed. He cautioned those advising executors to apply in good time to extend the statutory period of one year within which land must be sold under s. 5 of the Mortmain and Charitable Uses Act, 1891. When the charity took after the tenant for life, the executors must be careful to apply as soon as possible to extend the statutory period of a year from the death of the testator within which the reversionary interest must be sold, until six months after it had fallen into possession, otherwise the interest would in all probability have to be sold at a great sacrifice. When land was required for actual occupation, the court or the Charity Commissioners might sanction its retention. When the gift was made to a corporation, a licence in mortmain was probably required, but there were numerous exemptions. When property was settled on a charity by deed, the assurance or instrument creating the charitable uses must be sent to the offices of the Charity Commissioners, or the assurance would be void. When endowments were held solely for educational purposes the powers of the Charity Commissioners were, generally speaking, vested in the Board of Education, and land assured for educational purposes was exempted by s. 117 of the Education

Act, 1921, from any restrictions relating to mortmain and charitable uses. This provision applied to public schools (*Re Harrow School Governors and Murray's Contract* [1927] 1 Ch. 556. Charitable trustees had the same power of sale as a tenant for life under s. 29 of the Settled Land Act, 1925; this power over-rode any restriction that the donor or settlor might have imposed on the exercise of their express power of sale.

Before beginning any proceedings in relation to a charity it was necessary to obtain the approval of the Charity Commissioners, except when executors were applying to the court by originating summons to determine whether property had been validly devoted to charity, or whether the charitable intention could or could not be carried out, or when the application was made in a matter actually pending, or where relief was claimed adversely to a charity. It was therefore advisable to consider in any particular case whether s. 17 of the Charitable Trusts Act, 1853, applied to the particular application which the executors desired to make.

## The Magistrates' Association.

MAGISTRATES AND MOTOR TRAFFIC.

At the annual conference of the Magistrates' Association, which took place on 19th October at the Guildhall under the chairmanship of Sir Edward Marlay Samson, K.C., the Minister of Transport (Mr. P. G. Pybus) delivered an address on the Road Traffic Act as it affects courts of petty sessions. The safety and convenience of the public in its use of the King's highway depended, he said, very largely on the administration of the Act by magistrates, and their co-operation was of the greatest importance. A casualty list of eighteen persons killed and over 550 injured every day demanded the closest scrutiny and the application of every practicable remedy. The penalties provided by the law were severe enough, and there was no obvious need for the creation of new offences. The steady enforcement of the Act, which was very largely the responsibility of the magistrates' bench, was the most important contribution that could be made to reduce the danger on the roads. The Home Secretary, in his circular letter of 20th July, had laid emphasis both on effective enforcement and on the value of suspension of the driving licence in certain cases. By these means magistrates could do much to bring the small class of reckless and inconsiderate motor-drivers to a proper sense of responsibility and could remove from the road those persons who through slowness of reaction, lack of concentration or presence of mind, or recklessness of temperament, were inherently liable to accident.

The highway authorities were much concerned with the effect of overloaded heavy-goods vehicles on road surfaces, particularly on those of lightly-constructed country roads. One offence might do little damage, but the cumulative effect was destructive. Many operators seem to think it worth while to risk repeated conviction and fine for these offences. Sufficient advantage was not always taken of the provisions of the law and of the Act itself with regard to aiding and abetting, in order to bring to book the real offender. Part IV of the Act, which was designed to co-ordinate and re-organise motor omnibus and coach traffic, had not become operative until 1st April, 1931, and it was hardly surprising that difficulty and misunderstanding had arisen in bringing into operation an administrative reform of this magnitude. The Traffic Commissioners' reports of their first year's work, which would shortly be published, showed many indications of their consideration and restraint in dealing with the small operator and in administering a caution in first offences against the Act. Apparently trivial irregularities, however, re-acted most unfairly against reputable operators, and would, in the end, make it impossible for them to provide proper facilities at reasonable fares. It was therefore essential to prosecute for repeated offences.

Several interesting points were raised in the discussion. Mr. Sturgess Wells (Leicester), for instance, suggested that one certain way of reducing accidents would be to impose a proficiency test and to extend the magistrates' discretionary power of suspending licences. He also pleaded for the definition of a main road, and that traffic on a main road should be given preference over traffic on side roads, which, where road conditions demanded it, should be brought to a dead stop by means of prominent signs. Mrs. F. Earengey pointed out that no law existed to protect pedestrians, and suggested that for their safe passage of the road all traffic should be temporarily held up at certain times. Another speaker protested against the employment of youths of eighteen or nineteen to drive large commercial vehicles, and emphasised the danger caused when these young drivers hurried to get their rounds done. Sir Henry Piggott, replying for the Minister, said that a regulation would soon be enforced to prevent any person below twenty-one years of age from driving a large commercial vehicle, but that licences already in force could not be revoked.

Another magistrate raised the important question of the commercial driver in a dilemma between the law and the conditions of his employment. Lorry-drivers charged with over-speeding often pleaded that they had only been carrying out instructions and had no money to pay the fine. He urged that penalties should be made uniform in all courts, saying that if one court fined a man 40s. and its neighbour fined him 10s. for the same offence, the public were left in a state of uncertainty. Sir Henry pointed out that an employer who had given unlawful directions to an offending driver could be heavily punished for aiding and abetting the offence.

## The Auctioneers' and Estate Agents' Institute.

A Sessional Evening Meeting of the members of this Institute was held at 29, Lincoln's Inn-fields, W.C.2, on Thursday, 3rd November, when Mr. John A. Rosevear (Fellow) delivered a Paper entitled "The Town and Country Planning Act, 1932."

## The Incorporated Society of Auctioneers.

Recent elections to the Incorporated Society of Auctioneers and Landed Property Agents include the following:—

FELLOWS.—Edwin Alfred (Stornoway, Isle of Lewis); A. Allinson (Eastcote, Middlesex); G. H. Bell (London, W.1); J. W. Darlington (Glossop); The Viscount Downe (London, W.1, and Wykeham, Yorks); Thomas B. Fenton (Nottingham); William P. Fenton (Nottingham); H. B. Nye (London, S.W.1); Sir Walter Peacock, K.C.V.O. (London, W.1); J. Sylvester (Grimsby).

ASSOCIATES.—Neil MacCormack (London, S.W.17); F. J. Croydon (London, S.W.17); G. S. Forrest (Birmingham); Herbert Griffin (Exeter); T. E. Parker (Sibu, Sarawak); H. G. Weaver (London, S.W.7); W. A. Whetter (Par, Cornwall).

## The Hardwicke Society.

An ordinary meeting of the Society was held in the Middle Temple Common Room on Friday, 28th October. In the absence of the President, Mr. A. L. Ungoed-Thomas, Vice-President, took the chair at 8.15 p.m. In public business Mr. T. K. Wigan moved "That the National Revenue should profit directly from betting." Mr. D. C. L. Potter opposed. There spoke to the motion: Mr. Thorne, Mr. Stride, Mr. Granville Sharp (ex-President), Mr. Mayers, Mr. Williams Mr. Jardine Brown, Mr. Newman Hall, Mr. Murphy, Mr. Ungoed-Thomas, Mr. Pearson (ex-President), Mr. Menzies, Mr. Baden Fuller, Mr. Pugh and Mr. Sweeney, and the Hon. Proposer in reply. On a division, the motion was won by one vote. The house stood adjourned at 10.47 p.m.

## Law Students' Debating Society.

At a meeting of the Society, held at The Law Society's Hall, on Tuesday, 1st November, (Chairman, Mr. H. J. Baxter), the subject for debate was: "That this House welcomes the result of the Ottawa Conference." Mr. L. F. Sturge opened in the affirmative and Mr. P. W. Iliff opened in the negative. The following members also spoke: Messrs. R. Langley Mitchell, W. Fancourt Bell, E. F. Iwi, T. M. Jessup, and A. L. Ungoed Thomas. The opener having replied, the motion was lost by two votes. There were twelve members and one visitor present.

# Legal Notes and News.

## Honours and Appointments.

The King has been pleased to approve a recommendation of the Home Secretary that Sir PERCIVAL CLARKE be appointed Chairman of the County of London Sessions, to succeed Mr. GEORGE CECIL WHITELEY, K.C., who has been appointed judge of the City of London Court.

The King has been pleased, on the recommendation of the Secretary for Scotland, to whom the names were submitted by the Lord Justice General, to approve of the rank and dignity of King's Counsel to His Majesty in Scotland being conferred on Mr. JOHN ROBERT DICKSON, advocate, and Mr. DANIEL PATTERSON BLADES, advocate.

The King, on the recommendation of the Secretary of State for Scotland, has appointed Mr. JOHN ROBERT DICKSON, K.C., to be Clerk of Justiciary in Scotland, in the room of the late Mr. J. Roberton Christie, K.C.

The Lord Chancellor has appointed Mr. JOHN MASON LIGHTWOOD and Mr. WILLIAM AWDRY PECK to be Conveyancing Counsel of the Supreme Court to fill the vacancies caused by the deaths of Mr. Thomas Cyprian Williams and Sir Benjamin Lennard Cherry.

The Board of Trade have appointed Mr. VICTOR ROBERT FLETCHER to be Official Receiver in Bankruptcy at Brighton, as from the 1st November, 1932.

The Board of Trade have appointed Mr. MARK FRANK LINDLEY, LL.D., B.Sc., Barrister-at-Law, to be Comptroller-General of Patents, Designs and Trade Marks, in succession to Sir William S. Jarratt, who is retiring from the public service as from the 30th November, 1932.

Sir THOMAS INSKIP, K.C., M.P., has accepted the office of president of the National Church League, in succession to the late Viscount Brentford.

Mr. C. BIBBY DENNY, solicitor, of Holywell, has been appointed to succeed Mr. E. Idwal Williams, the new deputy clerk of the Flintshire County Council, as clerk of the Chester Port Sanitary Authority. Mr. Denny, who was admitted a solicitor in 1927, is a partner in the firm of Messrs. Hughes and Hughes, solicitors, of Flint.

### PROSECUTING COUNSEL TO THE CROWN.

NEW APPOINTMENTS.

In consequence of the appointment of Sir PERCIVAL CLARKE, the Senior Prosecuting Counsel to the Crown at the Central Criminal Court, as chairman of the County of London Sessions, the Attorney-General has made the following appointments:—

Mr. EUSTACE CECIL FULTON to be Senior Counsel;
Mr. GEOFFREY D. ROBERTS, Second Senior Counsel;
Mr. GERALD DODSON, Third Senior Counsel;
Mr. GEORGE BUCHANAN MCCLURE, First Junior Counsel;
Mr. LAURENCE AUSTIN BYRNE, Second Junior Counsel;
Mr. EDWARD ANTHONY HAWKE, Third Junior Counsel.

The Attorney-General has also appointed Mr. TRAVERS CHRISTMAS HUMPHREYS to be Junior Counsel for the Crown in appeals from the decisions of Metropolitan Police magistrates at the County of London Sessions, and Junior Counsel to represent the Director of Public Prosecutions in certain cases in the Court of Criminal Appeal.



### POLICE COURT CHANGES.

At the close of the proceedings on Tuesday last, at the Marylebone Police-court, Mr. J. G. Hay Halkett, the senior magistrate, bade farewell to all the officers of the court on leaving to take up his duties at the Westminster Police-court, in succession to the late Mr. A. E. Gill. He will be succeeded at Marylebone by Mr. J. A. R. Cairns, of the South-Western Police-court.

# Court Papers.

## Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

| DATE. | EMERGENCY ROTA. | APPEAL COURT No. 1. | GROUP I Mr. JUSTICE EVE. Non-Witness | GROUP I Mr. JUSTICE MAUGHAM. Witness. Part II. |
|---|---|---|---|---|
| M'nd'y Nov. 7 | Mr. More | Mr. Jones | Mr. Blaker | Mr. Jones |
| Tuesday .. 8 | Hicks Beach | Ritchie | Jones | *Hicks Beach |
| Wednesday 9 | Andrews | Blaker | Hicks Beach | Blaker |
| Thursday.. 10 | Jones | More | Blaker | *Jones |
| Friday .... 11 | Ritchie | Hicks Beach | Jones | Hicks Beach |
| Saturday .. 12 | Blaker | Andrews | Hicks Beach | Blaker |

| DATE. | GROUP I. Mr. JUSTICE BENNETT. Witness Part I. | Mr. JUSTICE CLAUSON. Witness Part II. | GROUP II. Mr. JUSTICE LUXMOORE. Witness Part I. | Mr. JUSTICE FARWELL. Non-Witness. |
|---|---|---|---|---|
| M'nd'y Nov. 7 | Mr.*Hicks Beach | Mr.*More | Mr.*Ritchie | Mr. Andrews |
| Tuesday .. 8 | *Blaker | Ritchie | *Andrews | More |
| Wednesday 9 | *Jones | *Andrews | *More | Ritchie |
| Thursday.. 10 | Hicks Beach | More | *Ritchie | Andrews |
| Friday .... 11 | *Blaker | *Ritchie | Andrews | More |
| Saturday .. 12 | Jones | Andrews | More | Ritchie |

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

# Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement Thursday, 10th November, 1932.

| | Middle Price 2 Nov. 1932. | Flat Interest Yield. | †Approximate Yield with redemption |
|---|---|---|---|
| **English Government Securities.** | | £ s. d. | £ s. d. |
| Consols 4% 1957 or after | 109½ | 3 13 1 | 3 8 3 |
| Consols 2½% | 78¼ | 3 3 10 | — |
| War Loan 5% Assented 1952 or after | 100½xd | 3 9 8 | 3 9 4 |
| **War Loan 4½% 1925-45 | 99⅞xd | — | — |
| Funding 4% Loan 1960-90 | 110 | 3 12 9 | 3 8 7 |
| Victory 4% Loan (Available for Estate Duty at par) Average life 31 years | 109¼ | 3 13 3 | 3 10 1 |
| Conversion 5% Loan 1944-64 | 117 | 4 5 6 | 3 3 0 |
| Conversion 4½% Loan 1940-44 | 112 | 4 0 4 | 2 14 3 |
| Conversion 3½% Loan 1961 or after | 101 | 3 9 4 | 3 8 11 |
| Local Loans 3% Stock 1912 or after | 91¼ | 3 5 9 | — |
| Bank Stock | 330 | 3 12 9 | — |
| India 4½% 1950-55 | 108xd | 4 3 4 | 3 17 6 |
| India 3½% 1931 or after | 92 | 3 16 1 | — |
| India 3% 1948 or after | 80 | 3 15 0 | — |
| Sudan 4½% 1939-73 | 107 | 4 4 1 | 3 3 10 |
| Sudan 4% 1974 Redeemable in part after 1950 | 108 | 3 14 1 | 3 8 0 |
| Transvaal Government 3% Guaranteed 1923-53 Average life 13 years | 100 | 3 0 0 | 3 0 0 |
| **Colonial Securities.** | | | |
| *Canada 3% 1938 | 101 | 2 19 5 | — |
| *Cape of Good Hope 4% 1916-36 | 102 | 3 18 5 | — |
| *Cape of Good Hope 3½% 1929-49 | 100 | 3 10 0 | 3 10 0 |
| Ceylon 5% 1960-70 | 117 | 4 5 6 | 3 19 4 |
| *Commonwealth of Australia 5% 1945-75 | 106 | 4 14 4 | 4 7 9 |
| Gold Coast 4½% 1956 | 107 | 4 4 1 | 4 0 6 |
| *Jamaica 4½% 1941-71 | 104 | 4 6 6 | 3 18 10 |
| *Natal 4% 1937 | 102 | 3 18 5 | 3 10 2 |
| *New South Wales 4½% 1935-45 | 101 | 4 9 1 | 4 1 6 |
| *New South Wales 5% 1945-65 | 103xd | 4 17 1 | 4 13 9 |
| *New Zealand 4½% 1945 | 105 | 4 5 9 | 3 19 5 |
| *New Zealand 5% 1946 | 109 | 4 11 9 | 4 1 10 |
| Nigeria 5% 1950-60 | 112 | 4 9 3 | 4 0 2 |
| *Queensland 5% 1940-60 | 104 | 4 16 2 | 4 7 10 |
| *South Africa 5% 1945-75 | 112 | 4 9 3 | 3 16 3 |
| *South Australia 5% 1945-75 | 106 | 4 14 4 | 4 7 9 |
| *Tasmania 5% 1945-75 | 106 | 4 14 4 | 4 7 9 |
| *Victoria 5% 1945-75 | 106 | 4 14 4 | 4 7 9 |
| *West Australia 5% 1945-75 | 106 | 4 14 4 | 4 7 9 |
| **Corporation Stocks.** | | | |
| Birmingham 3% 1947 or after | 90 | 3 6 8 | — |
| *Birmingham 5% 1946-56 | 114 | 4 7 9 | 3 14 0 |
| *Cardiff 5% 1945-65 | 110 | 4 10 11 | 4 0 0 |
| Croydon 3% 1940-60 | 94 | 3 3 10 | 3 17 8 |
| *Hastings 5% 1947-67 | 114 | 4 7 9 | 3 14 0 |
| Hull 3½% 1925-55 | 98 | 3 11 5 | 3 12 8 |
| Liverpool 3½% Redeemable by agreement with holders or by purchase | 100 | 3 10 0 | 3 10 0 |
| London County 2½% Consolidated Stock after 1920 at option of Corporation | 75xd | 3 6 8 | — |
| London County 3% Consolidated Stock after 1920 at option of Corporation | 90xd | 3 6 8 | — |
| Manchester 3% 1941 or after | 88 | 3 8 2 | — |
| Metropolitan Water Board 3% "A" 1963-2003 | 91 | 3 5 11 | 3 6 7 |
| Do. do. 3% "B" 1934-2003 | 92 | 3 5 3 | 3 5 10 |
| *Middlesex C.C. 3½% 1927-47 | 100 | 3 10 0 | 3 10 0 |
| Do. do. 4½% 1950-70 | 112 | 4 0 4 | 3 11 7 |
| Nottingham 3% Irredeemable | 86 | 3 9 9 | — |
| *Stockton 5% 1946-66 | 113 | 4 8 6 | 3 15 8 |
| **English Railway Prior Charges.** | | | |
| Gt. Western Rly. 4% Debenture | 103½ | 3 17 4 | — |
| Gt. Western Rly. 5% Rent Charge | 114 | 4 7 9 | — |
| Gt. Western Rly. 5% Preference | 75½ | 6 12 6 | — |
| L. Mid. & Scot. Rly. 4% Debenture | 96½ | 4 2 11 | — |
| L. Mid. & Scot. Rly. 4% Guaranteed | 78½ | 5 1 11 | — |
| Southern Rly. 4% Debenture | 99⅛ | 4 0 5 | — |
| Southern Rly. 5% Guaranteed | 104½ | 4 15 8 | — |
| Southern Rly. 5% Preference | 65½ | 7 12 8 | — |
| ‡L. & N.E. Rly. 4% Debenture | 87½ | 4 11 5 | — |
| ‡L. & N.E. Rly. 4% 1st Guaranteed | 64½ | 6 4 0 | — |

*Not available to Trustees over par.

†In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other stocks, as at the latest date.

‡These Stocks are no longer available for trustees, either as strict Trustee or Chancery Stocks, no dividend having been paid on the Company's Ordinary Stocks for the past year.

**To be repaid at par on 1st December, 1932.